

111TH CONGRESS
1ST SESSION

S. 1631

To reauthorize customs facilitation and trade enforcement functions and programs, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 6, 2009

Mr. BAUCUS (for himself and Mr. GRASSLEY) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To reauthorize customs facilitation and trade enforcement functions and programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Customs Facilitation and Trade Enforcement Reauthor-
6 ization Act of 2009”.

7 (b) TABLE OF CONTENTS.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—CUSTOMS FACILITATION

Subtitle A—Functions Other Than Investigative Functions

- Sec. 101. Establishment of Agency; Commissioner.
- Sec. 102. Officers and employees.
- Sec. 103. Separate budget for U.S. Customs and Border Protection Agency.
- Sec. 104. Revolving fund.
- Sec. 105. Advances in foreign countries.
- Sec. 106. Advances for enforcement of customs provisions.
- Sec. 107. Certification of reason for advance.
- Sec. 108. Payments in foreign countries; claims for reimbursement.
- Sec. 109. Customs administration.
- Sec. 110. Personnel.
- Sec. 111. Authorization of appropriations.

Subtitle B—Investigative Functions

- Sec. 121. Establishment of Agency.
- Sec. 122. Separate budget for U.S. Immigration and Customs Enforcement Agency.
- Sec. 123. Undercover investigative operations.
- Sec. 124. Authorization of appropriations.

Subtitle C—Joint Strategic Plan

- Sec. 131. Joint Strategic Plan.

TITLE II—CUSTOMS FACILITATION, TRADE ENFORCEMENT, AND
TRANSPARENCY

Subtitle A—Customs Facilitation and Transparency

- Sec. 201. Trade benefits under the Customs-Trade Partnership Against Terrorism.
- Sec. 202. Customs Facilitation Partnership Program.
- Sec. 203. Consultations with respect to mutual recognition agreements.
- Sec. 204. Commercial Customs Operations Advisory Committee.
- Sec. 205. Automated Commercial Environment computer system.
- Sec. 206. International Trade Data System.
- Sec. 207. Electronic submission of public comments.

Subtitle B—Trade Enforcement

CHAPTER 1—COMMERCIAL RISK ASSESSMENT TARGETING

- Sec. 211. Commercial Targeting Division and National Targeting and Analysis Groups.
- Sec. 212. Annual illegal drug control law enforcement strategy.
- Sec. 213. Report on oversight of revenue protection and enforcement measures by the inspector general.
- Sec. 214. Report on security and revenue measures with respect to merchandise transported in bond.
- Sec. 215. Importer of record program.

CHAPTER 2—IMPORT HEALTH AND SAFETY

- Sec. 221. Interagency Import Safety Working Group.
- Sec. 222. Joint Import Safety Rapid Response Plan.
- Sec. 223. Training.

CHAPTER 3—IMPORT-RELATED PROTECTION OF INTELLECTUAL PROPERTY
RIGHTS

- Sec. 231. Intellectual property rights.
- Sec. 232. National Intellectual Property Rights Coordination Center.
- Sec. 233. Joint strategic plan for the enforcement of intellectual property rights.
- Sec. 234. Repeated import-related infringement of intellectual property rights.
- Sec. 235. Personnel dedicated to the enforcement of intellectual property rights.
- Sec. 236. Training with respect to the enforcement of intellectual property rights.
- Sec. 237. Recordation of works for which a copyright is pending.
- Sec. 238. Availability of samples to owners of copyrights and trademarks or persons injured by the importation of circumvention devices.
- Sec. 239. Seizure of circumvention devices.
- Sec. 240. Information for travelers regarding violations of intellectual property rights.
- Sec. 241. International cooperation and information sharing.
- Sec. 242. Sense of Congress regarding recordation process.

TITLE III—MISCELLANEOUS PROVISIONS

- Sec. 301. Consultation on trade and customs revenue functions.
- Sec. 302. Drawback for exported merchandise.
- Sec. 303. Penalties for customs brokers.
- Sec. 304. Articles repaired or altered.
- Sec. 305. Charter flights.
- Sec. 306. Symposium fees.
- Sec. 307. Pilot program for establishing 24-hour commercial land border ports of entry.
- Sec. 308. Prohibition on importation of goods made with forced or indentured labor or by benefit of human trafficking.
- Sec. 309. Honey transshipment.
- Sec. 310. Contraband archaeological or ethnological materials.
- Sec. 311. De minimis and informal entries.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

- 3 (1) **COMMERCIAL CUSTOMS OPERATIONS ADVI-**
- 4 **SORY COMMITTEE.**—The term “Commercial Customs
- 5 Operations Advisory Committee” means the Advi-
- 6 sory Committee established pursuant to section 202
- 7 of this Act or any successor committee.

1 (2) CUSTOMS AND TRADE LAWS OF THE
2 UNITED STATES.—The term “customs and trade
3 laws of the United States” includes the following:

4 (A) The Tariff Act of 1930.

5 (B) Section 249 of the Revised Statutes of
6 the United States (19 U.S.C. 3).

7 (C) Section 2 of the Act of March 4, 1923
8 (19 U.S.C. 6).

9 (D) Section 13031 of the Consolidated
10 Omnibus Budget Reconciliation Act of 1985
11 (19 U.S.C. 58c).

12 (E) Section 251 of the Revised Statutes of
13 the United States (19 U.S.C. 66).

14 (F) Section 1 of the Act of June 26, 1930
15 (19 U.S.C. 68).

16 (G) The Foreign Trade Zones Act (19
17 U.S.C. 81a et seq.).

18 (H) Section 1 of the Act of March 2, 1911
19 (19 U.S.C. 198).

20 (I) The Trade Act of 1974.

21 (J) The Trade Agreements Act of 1979.

22 (K) The North American Free Trade Area
23 Implementation Act.

24 (L) The Uruguay Round Agreements Act.

1 (M) The Caribbean Basin Economic Re-
2 covery Act.

3 (N) The Andean Trade Preference Act.

4 (O) The African Growth and Opportunity
5 Act.

6 (P) The Act of March 3, 1927 (44 Stat.
7 1381, chapter 348; 19 U.S.C. 2071 et seq.).

8 (Q) The Customs Enforcement Act of
9 1986 (Public Law 99–570; 100 Stat. 3207–79).

10 (R) The Customs and Trade Act of 1990
11 (Public Law 101–382; 104 Stat. 629).

12 (S) The Customs Procedural Reform and
13 Simplification Act of 1978 (Public Law 95–
14 410; 92 Stat. 888).

15 (T) The Trade Act of 2002 (Public Law
16 107–210; 116 Stat. 933).

17 (U) The Convention on Cultural Property
18 Implementation Act (19 U.S.C. 2601 et seq.).

19 (V) The Act of August 7, 1939 (53 Stat.
20 1263, chapter 566; 19 U.S.C. 2077 et seq.).

21 (W) Any other provision of law vesting
22 customs revenue functions in the Secretary of
23 the Treasury.

24 (X) Any other provision of law relating to
25 customs facilitation or trade enforcement that

1 is administered by the U.S. Customs and Bor-
2 der Protection Agency on behalf of any Federal
3 agency that is required to participate in the
4 International Trade Data System.

5 (Y) Any other provision of customs or
6 trade law administered by the U.S. Customs
7 and Border Protection Agency.

8 (3) CUSTOMS REVENUE FUNCTION.—The term
9 “customs revenue function” has the meaning given
10 that term in section 415 of the Homeland Security
11 Act of 2002 (6 U.S.C. 215).

12 (4) PRIVATE SECTOR ENTITY.—The term “pri-
13 vate sector entity” means—

14 (A) an importer;

15 (B) an exporter;

16 (C) a forwarder;

17 (D) an air, sea, or land carrier or shipper;

18 (E) a contract logistics provider;

19 (F) a customs broker; or

20 (G) any other person involved in the im-
21 portation or exportation of goods into or out of
22 the United States.

23 (5) JOINT STRATEGIC PLAN.—The term “Joint
24 Strategic Plan” means the plan required by section

1 123A of the Customs and Trade Act of 1990, as
2 added by section 131 of this Act.

3 (6) TRADE SUPPORT NETWORK.—The term
4 “Trade Support Network” means the network of
5 private sector entities that provide input on the de-
6 sign and development of modernization projects of
7 the U.S. Customs and Border Protection Agency.

8 **TITLE I—CUSTOMS**
9 **FACILITATION**
10 **Subtitle A—Functions Other Than**
11 **Investigative Functions**

12 **SEC. 101. ESTABLISHMENT OF AGENCY; COMMISSIONER.**

13 (a) IN GENERAL.—The first section of the Act of
14 March 3, 1927 (44 Stat. 1381, chapter 348; 19 U.S.C.
15 2071), is amended to read as follows:

16 **“SECTION 1. ESTABLISHMENT OF U.S. CUSTOMS AND BOR-**
17 **DER PROTECTION AGENCY; COMMISSIONER.**

18 “(a) ESTABLISHMENT OF U.S. CUSTOMS AND BOR-
19 DER PROTECTION AGENCY.—There is established in the
20 Department of Homeland Security the U.S. Customs and
21 Border Protection Agency.

22 “(b) ESTABLISHMENT OF COMMISSIONER OF U.S.
23 CUSTOMS AND BORDER PROTECTION.—The head of the
24 U.S. Customs and Border Protection Agency shall be a

1 Commissioner of U.S. Customs and Border Protection (in
2 this Act, referred to as the ‘Commissioner’), who shall—

3 “(1) be appointed by the President, by and with
4 the advice and consent of the Senate;

5 “(2) carry out the duties described in sub-
6 section (c); and

7 “(3) report directly to the Secretary of Home-
8 land Security.

9 “(c) DUTIES.—

10 “(1) IN GENERAL.—The duties of the Commis-
11 sioner shall be—

12 “(A) to carry out the duties and powers
13 prescribed by law and such other duties as the
14 Secretary of Homeland Security may assign;

15 “(B) to direct the administration of the
16 commercial operations as described in para-
17 graph (2) and the noncommercial operations of
18 the U.S. Customs and Border Protection Agen-
19 cy; and

20 “(C) to otherwise safeguard the economic
21 and homeland security interests of the United
22 States at land borders and ports of entry.

23 “(2) COMMERCIAL OPERATIONS.—The commer-
24 cial operations of the U.S. Customs and Border Pro-
25 tection Agency shall include—

1 “(A) administering any customs revenue
2 function delegated by the Secretary of the
3 Treasury to the Secretary of Homeland Secu-
4 rity pursuant to section 412 of the Homeland
5 Security Act of 2002 (6 U.S.C. 212);

6 “(B) facilitating legitimate international
7 trade, and enforcing the customs and trade
8 laws of the United States to the extent of the
9 authority of the Commissioner under such laws;

10 “(C) coordinating all efforts of the Depart-
11 ment of Homeland Security to facilitate legiti-
12 mate international trade and to enforce the cus-
13 toms and trade laws of the United States;

14 “(D) coordinating, on behalf of the De-
15 partment of Homeland Security, efforts among
16 executive branch agencies to facilitate legitimate
17 trade and to enforce the customs and trade
18 laws of the United States, including—

19 “(i) representing the Department of
20 Homeland Security in interagency fora ad-
21 dressing such efforts; and

22 “(ii) coordinating with the Director of
23 U.S. Immigration and Customs Enforce-
24 ment to develop and implement the Joint
25 Strategic Plan required under section

1 123A of the Customs and Trade Act of
2 1990 (as added by section 131 of the Cus-
3 toms Facilitation and Trade Enforcement
4 Reauthorization Act of 2009);

5 “(E) coordinating, on behalf of the United
6 States, efforts with foreign customs agencies to
7 facilitate legitimate international trade and to
8 enforce the customs and trade laws of the
9 United States and of foreign countries;

10 “(F) consulting with the Committee on Fi-
11 nance of the Senate and the Committee on
12 Ways and Means of the House of Representa-
13 tives on a regular and timely basis regarding
14 the status and substance of international nego-
15 tiations relating to the customs and trade laws
16 of the United States, or of foreign countries, in
17 which personnel of the U.S. Customs and Bor-
18 der Protection Agency are participating;

19 “(G) collecting, assessing, and dissemi-
20 nating information as appropriate and in ac-
21 cordance with law, regarding cargo destined for
22 the United States, to ensure that such cargo
23 complies with the customs and trade laws of the
24 United States and to facilitate the legitimate
25 international trade of such cargo;

1 “(H) soliciting and considering on a reg-
2 ular basis input from the private sector, includ-
3 ing the Commercial Customs Operations Advi-
4 sory Committee, the Trade Support Network,
5 and private sector entities affected by the ef-
6 forts of the Federal Government to facilitate le-
7 gitimate international trade and to enforce the
8 customs and trade laws of the United States,
9 with respect to—

10 “(i) the implementation of new or
11 amended customs and trade laws; and

12 “(ii) the development, implementation,
13 or revision of policies or regulations admin-
14 istered by the U.S. Customs and Border
15 Protection Agency;

16 “(I) consulting on a regular basis with the
17 Committee on Appropriations and the Com-
18 mittee on Finance of the Senate and the Com-
19 mittee on Appropriations and the Committee on
20 Ways and Means of the House of Representa-
21 tives, regarding the resource needs of the U.S.
22 Customs and Border Protection Agency to safe-
23 guard the economic security interests of the
24 United States at land borders and ports of
25 entry; and

1 “(J) otherwise advising the Secretary of
2 Homeland Security with respect to the develop-
3 ment of policies associated with facilitating le-
4 gitimate international trade and enforcing the
5 customs and trade laws of the United States.

6 “(3) DEFINITIONS.—The terms ‘Commercial
7 Customs Operations Advisory Committee’, ‘customs
8 and trade laws of the United States’, ‘private sector
9 entity’, and ‘Trade Support Network’ have the
10 meaning given such terms in section 2 of the Cus-
11 toms Facilitation and Trade Enforcement Reauthor-
12 ization Act of 2009.

13 “(d) COMPENSATION.—The Commissioner of U.S.
14 Customs and Border Protection, Department of Home-
15 land Security, shall be compensated at the rate of pay for
16 level III of the Executive Schedule as provided in section
17 5314 of title 5, United States Code.

18 “(e) ABSENCE OR DISABILITY OF COMMISSIONER.—
19 The Principal Deputy Commissioner, appointed pursuant
20 to section 2, shall act as Commissioner of U.S. Customs
21 and Border Protection during the absence or disability of
22 the Commissioner of U.S. Customs and Border Protection,
23 or in the event that there is no Commissioner of U.S. Cus-
24 toms and Border Protection.”.

1 (b) ADMINISTRATIVE CONTINUITY.—The Act of
2 March 3, 1927 (44 Stat. 1381, chapter 348; 19 U.S.C.
3 2073), is amended by striking section 3 and inserting the
4 following:

5 **“SEC. 3. TRANSFER OF FUNCTIONS, ASSETS, LIABILITIES,**
6 **AND DUTIES.**

7 “(a) IN GENERAL.—Section 411 of the Homeland
8 Security Act of 2002 (6 U.S.C. 211) is repealed, and the
9 functions and associated personnel, assets, and liabilities,
10 identified under such section 411 on the day before the
11 date of the enactment of the Customs Facilitation and
12 Trade Enforcement Reauthorization Act of 2009, are
13 transferred to the U.S. Customs and Border Protection
14 Agency.

15 “(b) CONTINUATION IN OFFICE.—The individual
16 serving as Commissioner of Customs, in the Department
17 of Homeland Security on the day before the date of the
18 enactment of the Customs Facilitation and Trade En-
19 forcement Reauthorization Act of 2009 may serve as the
20 Commissioner of the U.S. Customs and Border Protection
21 Agency until the earlier of—

22 “(1) the date on which such individual is no
23 longer eligible to serve as Commissioner of Customs;
24 or

1 “(2) the date on which a person nominated by
2 the President to be the Commissioner of U.S. Cus-
3 toms and Border Protection is confirmed by the
4 Senate.”.

5 (c) REFERENCE.—On and after the effective date of
6 this Act, any reference in law or regulations to the “Com-
7 missioner of Customs” or the “Commissioner of the Cus-
8 toms Service” shall be deemed to be a reference to the
9 Commissioner of U.S. Customs and Border Protection es-
10 tablished pursuant to the first section of the Act of March
11 3, 1927, as amended by subsection (a) of this section.

12 (d) CONFORMING AMENDMENTS.—

13 (1) TITLE 5.—Section 5314 of title 5, United
14 States Code, is amended by striking “Commissioner
15 of Customs, Department of the Treasury” and in-
16 serting “Commissioner of U.S. Customs and Border
17 Protection, Department of Homeland Security”.

18 (2) TABLE OF CONTENTS.—The table of con-
19 tents for the Homeland Security Act of 2002 is
20 amended by striking the item relating to section 411
21 and inserting the following:

“Sec. 411. Reserved.”.

22 **SEC. 102. OFFICERS AND EMPLOYEES.**

23 (a) IN GENERAL.—The Act of March 3, 1927 (44
24 Stat. 1381, chapter 348; 19 U.S.C. 2072), is amended by
25 striking section 2 and inserting the following:

1 **“SEC. 2. PRINCIPAL DEPUTY COMMISSIONER; DEPUTY COM-**
2 **MISSIONER; OTHER OFFICERS.**

3 “(a) PRINCIPAL DEPUTY COMMISSIONER.—

4 “(1) IN GENERAL.—There shall be in the U.S.
5 Customs and Border Protection Agency established
6 by the first section, 1 Principal Deputy Commis-
7 sioner who shall be appointed by the President, by
8 and with the advice and consent of the Senate.

9 “(2) COMMITTEE REFERRAL.—As an exercise
10 of the rulemaking power of the Senate, a nomination
11 for Principal Deputy Commissioner of U.S. Customs
12 and Border Protection shall be referred to the Com-
13 mittee on Finance of the Senate.

14 “(3) DUTIES.—The duties of the Principal
15 Deputy Commissioner shall include—

16 “(A) primary oversight of the commercial
17 operations of the U.S. Customs and Border
18 Protection Agency;

19 “(B) overseeing the operations of the Of-
20 fice of Trade established pursuant to section 4
21 of this Act;

22 “(C) coordinating the establishment of
23 standards and policies for designing, developing,
24 delivering, and evaluating training programs for
25 the U.S. Customs and Border Protection Agen-

1 cy personnel with responsibilities for customs
2 facilitation and trade enforcement;

3 “(D) overseeing the development and im-
4 plementation of information technology, re-
5 search, and communication functions, including
6 automation and modernization strategies, that
7 support the operations of the U.S. Customs and
8 Border Protection Agency, including the imple-
9 mentation of the Automated Commercial Envi-
10 ronment computer system authorized under sec-
11 tion 13031(f)(5) of the Consolidated Omnibus
12 Budget and Reconciliation Act of 1985 (19
13 U.S.C. 58c(f)(5));

14 “(E) overseeing the administration of cus-
15 toms revenue functions performed by the U.S.
16 Customs and Border Protection Agency;

17 “(F) overseeing the administration of the
18 financial management activities of the U.S.
19 Customs and Border Protection Agency, includ-
20 ing accounting, budgeting, procurement, logis-
21 tics, financial systems, policy, planning, and
22 audit oversight;

23 “(G) overseeing the public communication
24 efforts of the U.S. Customs and Border Protec-
25 tion Agency; and

1 “(H) overseeing the human resources oper-
2 ations of the U.S. Customs and Border Protec-
3 tion Agency.

4 “(4) COMPENSATION.—The Principal Deputy
5 Commissioner of U.S. Customs and Border Protec-
6 tion, Department of Homeland Security, shall be
7 compensated at the rate of pay for level IV of the
8 Executive Schedule as provided in section 5315 of
9 title 5, United States Code.

10 “(5) ABSENCE OR DISABILITY OF PRINCIPAL
11 DEPUTY COMMISSIONER.—The Assistant Commis-
12 sioner of the Office of Trade, established under sec-
13 tion 4, shall act as the Principal Deputy Commis-
14 sioner during the disability of the Principal Deputy
15 Commissioner, or in the event that there is no Prin-
16 cipal Deputy Commissioner.

17 “(b) DEPUTY COMMISSIONER.—

18 “(1) IN GENERAL.—There shall be in the U.S.
19 Customs and Border Protection Agency, 1 Deputy
20 Commissioner, who shall be a member of the Senior
21 Executive Service compensated at the maximum rate
22 of pay provided for in section 5382 of title 5, United
23 States Code.

24 “(2) DUTIES.—The duties of the Deputy Com-
25 missioner shall include—

1 “(A) primary oversight of the security op-
2 erations of the U.S. Customs and Border Pro-
3 tection Agency, including field operations at
4 land borders and ports of entry;

5 “(B) overseeing the noncommercial anal-
6 ysis and dissemination of information collected
7 by the U.S. Customs and Border Protection
8 Agency; and

9 “(C) overseeing the enforcement of laws,
10 other than the customs and trade laws of the
11 United States, by the U.S. Customs and Border
12 Protection Agency at land borders and ports of
13 entry, including the detection, interdiction, or
14 apprehension of cargo destined for the United
15 States or persons seeking entry into the United
16 States in contravention of such laws.

17 “(c) OTHER OFFICERS.—The Secretary of Homeland
18 Security may appoint such other officers as are necessary
19 to manage the individual offices within the U.S. Customs
20 and Border Protection Agency. Any appointment of per-
21 sonnel under this subsection shall be subject to the provi-
22 sions of the civil service laws, and the salaries shall be
23 fixed in accordance with chapter 51 and subchapter III
24 of chapter 53 of title 5, United States Code.”.

1 (b) TRADE OFFICES AND FUNCTIONS.—The Act of
 2 March 3, 1927 (44 Stat. 1381, chapter 348; 19 U.S.C.
 3 2071 et seq.), is amended by inserting after section 3 the
 4 following:

5 **“SEC. 4. OFFICE OF TRADE.**

6 “(a) ESTABLISHMENT OF OFFICE OF TRADE.—
 7 There shall be within the U.S. Customs and Border Pro-
 8 tection Agency an Office of Trade that shall be headed
 9 by an Assistant Commissioner.

10 “(b) TRANSFER OF ASSETS, FUNCTION, AND PER-
 11 SONNEL; ELIMINATION OF OFFICES.—

12 “(1) OFFICE OF INTERNATIONAL TRADE.—

13 “(A) TRANSFER.—Not later than 30 days
 14 after the date of the enactment of the Customs
 15 Facilitation and Trade Enforcement Reauthor-
 16 ization Act of 2009, the Secretary of Homeland
 17 Security shall transfer the assets, functions,
 18 personnel, and liabilities of the Office of Inter-
 19 national Trade established pursuant to section
 20 402 of the Security and Accountability for
 21 Every Port Act of 2006 (Public Law 109–347;
 22 120 Stat. 1924) to the Office of Trade estab-
 23 lished pursuant to subsection (a) of this section.

24 “(B) ELIMINATION.—Not later than 30
 25 days after the date of the enactment of the

1 Customs Facilitation and Trade Enforcement
2 Reauthorization Act of 2009, the Office of
3 International Trade established pursuant to
4 section 402 of the Security and Accountability
5 for Every Port Act of 2006 shall be abolished.

6 “(C) LIMITATION ON FUNDS.—No funds
7 appropriated to the U.S. Customs and Border
8 Protection Agency or the Department of Home-
9 land Security may be used to transfer the as-
10 sets, functions, personnel, and liabilities of the
11 Office of International Trade to an office other
12 than the Office of Trade established pursuant
13 to subsection (a) of this section.

14 “(2) OFFICE OF INTERNATIONAL AFFAIRS.—

15 “(A) TRANSFER.—Not later than 90 days
16 after the date of the enactment of the Customs
17 Facilitation and Trade Enforcement Reauthor-
18 ization Act of 2009, the Secretary of Homeland
19 Security shall transfer the assets, functions,
20 personnel, and liabilities of the Office of Inter-
21 national Affairs (described in section 415(8) of
22 the Department of Homeland Security Act of
23 2002 (6 U.S.C. 215(8))) to the Office of Trade
24 established pursuant to subsection (a) of this
25 section.

1 “(B) ELIMINATION.—Not later than 90
2 days after the date of the enactment of the
3 Customs Facilitation and Trade Enforcement
4 Reauthorization Act of 2009, the Office of
5 International Affairs shall be abolished.

6 “(C) LIMITATION ON FUNDS.—No funds
7 appropriated to the U.S. Customs and Border
8 Protection Agency or the Department of Home-
9 land Security may be used to transfer the as-
10 sets, functions, personnel, and liabilities of the
11 Office of International Affairs to an office other
12 than the Office of Trade established pursuant
13 to subsection (a) of this section.

14 “(3) OTHER TRANSFERS.—

15 “(A) IN GENERAL.—The Commissioner is
16 authorized to transfer any other assets, func-
17 tions, or personnel within the U.S. Customs
18 and Border Protection Agency to the Office of
19 Trade established pursuant to subsection (a) of
20 this section.

21 “(B) CONGRESSIONAL NOTIFICATION.—
22 Not less than 90 days prior to such transfer,
23 the Commissioner shall notify the Committee on
24 Finance of the Senate and the Committee on
25 Ways and Means of the House of Representa-

1 tives of the specific assets, functions, or per-
2 sonnel to be transferred, and the reason for
3 such transfer.

4 “(c) ASSISTANT COMMISSIONER.—

5 “(1) IN GENERAL.—The Commissioner of U.S.
6 Customs and Border Protection shall appoint an As-
7 sistant Commissioner who shall—

8 “(A) be the head of the Office of Trade;

9 “(B) report to the Principal Deputy Com-
10 missioner of U.S. Customs and Border Protec-
11 tion; and

12 “(C) be employed without regard to any
13 provision of law regulating employment or com-
14 pensation at a rate not to exceed the rate of
15 pay for level IV of the Executive Schedule as
16 provided in section 5315 of title 5, United
17 States Code.

18 “(2) QUALIFICATIONS.—A person appointed to
19 be the Assistant Commissioner of the Office of
20 Trade shall have a minimum of 10 years of profes-
21 sional experience in the operation of the customs
22 and trade laws of the United States, not less than
23 5 of which shall be in non-Federal Government serv-
24 ice.

1 “(3) DUTIES.—The duties of the Assistant
2 Commissioner shall include—

3 “(A) directing the development and imple-
4 mentation of rules, regulations, decisions, no-
5 tices, and abstracts, related to the customs and
6 trade laws of the United States administered by
7 the Agency;

8 “(B) advising the Commissioner with re-
9 spect to the impact on international trade of
10 any program or regulation otherwise proposed
11 or administered by the Agency;

12 “(C) directing the definition and adminis-
13 tration of the trade priority issue areas identi-
14 fied by the Commissioner in the Joint Strategic
15 Plan required under section 123A of the Cus-
16 toms and Trade Act of 1990;

17 “(D) otherwise advising the Commissioner
18 with respect to the development and implemen-
19 tation of the Joint Strategic Plan required
20 under section 123A of the Customs and Trade
21 Act of 1990;

22 “(E) directing the trade enforcement and
23 compliance assessment activities of the Agency,
24 including the activities of the National Tar-
25 geting and Analysis Groups established under

1 section 211 of the Customs Facilitation and
2 Trade Enforcement Reauthorization Act of
3 2009;

4 “(F) overseeing the trade modernization
5 activities of the Agency, including the develop-
6 ment and implementation of the Automated
7 Commercial Environment computer system au-
8 thorized under section 13031(f)(5) of the Con-
9 solidated Omnibus Budget and Reconciliation
10 Act of 1985 (19 U.S.C. 58c(f)(5)) and support
11 for the establishment of the International Trade
12 Data System under the oversight of the Depart-
13 ment of the Treasury pursuant to section
14 411(d) of the Tariff Act of 1930 (19 U.S.C.
15 1411(d));

16 “(G) advising the Commissioner with re-
17 spect to matters arising in the World Customs
18 Organization;

19 “(H) directing the administration of cus-
20 toms revenue functions otherwise provided by
21 law or delegated by the Commissioner; and

22 “(I) preparing an annual report to be sub-
23 mitted to the Committee on Finance of the Sen-
24 ate and the Committee on Ways and Means of
25 the House of Representatives not later than

1 March 1 of each calendar year, summarizing
2 the changes to customs regulations, practices,
3 and procedures adopted by the U.S. Customs
4 and Border Protection Agency during the pre-
5 ceding calendar year, the public vetting that oc-
6 curred with respect to each such change, and
7 the interagency consultation that occurred with
8 respect to each such change.

9 “(d) TRADE ADVOCATE.—The Commissioner shall
10 appoint within the Office of Trade, a Trade Advocate, who
11 shall report directly to the Assistant Commissioner.

12 “(1) DUTIES.—The Trade Advocate shall—

13 “(A) serve as the primary liaison between
14 the U.S. Customs and Border Protection Agen-
15 cy and the public with respect to the Agency’s
16 administration of customs facilitation and trade
17 enforcement functions;

18 “(B) serve as a liaison between the Office
19 of Trade and the Office of Field Operations
20 with respect to the administration of customs
21 facilitation and trade enforcement functions;

22 “(C) consult with interested persons in the
23 private sector, the Commercial Customs Oper-
24 ations Advisory Committee, and the Trade Sup-

1 port Network, for their input with respect to
2 the Agency’s—

3 “(i) development and implementation
4 of rules, regulations, decisions, notices, and
5 abstracts, related to the customs and trade
6 laws of the United States administered by
7 the Agency;

8 “(ii) development of the Joint Stra-
9 tegic Plan required under section 123A of
10 the Customs and Trade Act of 1990;

11 “(iii) assessment of the effectiveness
12 of customs facilitation and trade enforce-
13 ment efforts; and

14 “(iv) trade modernization activities,
15 including the development and implementa-
16 tion of the Automated Commercial Envi-
17 ronment computer system authorized
18 under section 13031(f)(5) of the Consoli-
19 dated Omnibus Budget and Reconciliation
20 Act of 1985 (19 U.S.C. 58c(f)(5)) and
21 support for the establishment of the Inter-
22 national Trade Data System under the
23 oversight of the Department of the Treas-
24 ury pursuant to section 411(d) of the Tar-
25 iff Act of 1930 (19 U.S.C. 1411(d));

1 “(D) advise the Commissioner with respect
2 to the consultations described in subparagraph
3 (C); and

4 “(E) otherwise consult with the public as
5 directed by the Commissioner or by law.

6 “(2) ELIMINATION OF OFFICE.—

7 “(A) TRANSFER.—Not later than 30 days
8 after the date of the enactment of the Customs
9 Facilitation and Trade Enforcement Reauthor-
10 ization Act of 2009, the Secretary of Homeland
11 Security shall transfer the assets, functions,
12 personnel, and liabilities of the Office of Trade
13 Relations in the U.S. Customs and Border Pro-
14 tection Agency to the Office of Trade estab-
15 lished pursuant to subsection (a) of this section.

16 “(B) ELIMINATION.—Not later than 30
17 days after the date of the enactment of the
18 Customs Facilitation and Trade Enforcement
19 Reauthorization Act of 2009, the Office of
20 Trade Relations in the U.S. Customs and Bor-
21 der Protection Agency shall be abolished.

22 “(C) LIMITATION ON FUNDS.—No funds
23 appropriated to the U.S. Customs and Border
24 Protection Agency or the Department of Home-
25 land Security may be used to transfer the as-

1 sets, functions, personnel, and liabilities of the
 2 Office of Trade Relations to an office other
 3 than the Office of Trade established pursuant
 4 to subsection (a) of this section.

5 **“SEC. 5. ESTABLISHMENT OF THE CUSTOMS FACILITATION**
 6 **AND TRADE ENFORCEMENT DIVISION IN THE**
 7 **OFFICE OF FIELD OPERATIONS; DIVISION**
 8 **PERSONNEL.**

9 “(a) ESTABLISHMENT.—There is established within
 10 the Office of Field Operations of the U.S. Customs and
 11 Border Protection Agency a Customs Facilitation and
 12 Trade Enforcement Division.

13 “(b) APPOINTMENT.—The head of the Customs Fa-
 14 cilitation and Trade Enforcement Division shall be a Dep-
 15 uty Assistant Commissioner, who shall—

16 “(1) be appointed by the Commissioner subject
 17 to the provisions of the civil service laws; and

18 “(2) whose salary shall be fixed in accordance
 19 with chapter 51 and subchapter III of chapter 53 of
 20 title 5, United States Code.

21 “(c) DUTIES.—The duties of the Deputy Assistant
 22 Commissioner shall include—

23 “(1) overseeing the customs facilitation and
 24 trade enforcement activities at ports of entry by per-
 25 sonnel within the Office of Field Operations, includ-

1 ing the activities of Commercial Enforcement Offi-
2 cers provided for under subsection (d)(2);

3 “(2) overseeing the operational training of per-
4 sonnel within the Office of Field Operations at ports
5 of entry to administer the customs facilitation and
6 trade enforcement functions of the U.S. Customs
7 and Border Protection Agency;

8 “(3) evaluating on a regular basis the oper-
9 ational effectiveness of the customs facilitation and
10 trade enforcement activities at ports of entry by per-
11 sonnel of the Office of Field Operations;

12 “(4) overseeing the coordination of customs fa-
13 cilitation and trade enforcement efforts between the
14 Office of Field Operations and the Office of Trade
15 established under section 4;

16 “(5) consulting regularly with the Trade Advo-
17 cate established under section 4(d) with respect to
18 any input received regarding the customs facilitation
19 and trade enforcement efforts of the U.S. Customs
20 and Border Protection Agency;

21 “(6) ensuring uniform administration and im-
22 plementation among ports of entry of new or revised
23 customs and trade laws, regulations, or policies, re-
24 lated to the customs facilitation and trade enforce-

1 ment efforts of the U.S. Customs and Border Pro-
2 tection Agency;

3 “(7) implementing the operational provisions of
4 the Joint Strategic Plan required under section
5 123A of the Customs and Trade Act of 1990 related
6 to the customs facilitation and trade enforcement ef-
7 forts of the U.S. Customs and Border Protection
8 Agency at ports of entry;

9 “(8) ensuring the prompt collection of available
10 data regarding cargo that violates the customs and
11 trade laws of the United States, and the prompt
12 issuance of Trade Alerts pursuant to section 211 of
13 the Customs Facilitation and Trade Enforcement
14 Reauthorization Act of 2009; and

15 “(9) otherwise overseeing the customs facilita-
16 tion and trade enforcement activities of personnel
17 within the Office of Field Operations at ports of
18 entry, as directed by the Commissioner.

19 “(d) PERSONNEL.—

20 “(1) HEADQUARTERS PERSONNEL.—In addition
21 to the Deputy Assistant Commissioner, the Commis-
22 sioner shall designate and dedicate not less than 5
23 full-time equivalent personnel to operate the Cus-
24 toms Facilitation and Trade Enforcement Division
25 in the Office of Field Operations.

1 “(2) COMMERCIAL ENFORCEMENT OFFICERS.—

2 “(A) IN GENERAL.—Not later than Sep-
3 tember 30, 2011, the Commissioner shall des-
4 ignate and dedicate within the Office of Field
5 Operations not less than 40 Commercial En-
6 forcement Officers.

7 “(B) ASSIGNMENT.—The Commissioner
8 shall assign the Commercial Enforcement Offi-
9 cers authorized under this section among the 40
10 United States ports of entry that experienced
11 the highest volume of trade during fiscal year
12 2009.

13 “(C) DUTIES.—The duties of a Commer-
14 cial Enforcement Officer shall be—

15 “(i) to supervise all trade enforcement
16 activities of personnel of the Office of Field
17 Operations at the port of entry to which
18 the Commercial Enforcement Officer has
19 been assigned;

20 “(ii) to coordinate with the Office of
21 Trade all trade enforcement activities at
22 the port of entry to which the Commercial
23 Enforcement Officer has been assigned;

24 “(iii) to direct the training of per-
25 sonnel at the port of entry to which the

1 Commercial Enforcement Officer has been
2 assigned to effectuate the trade enforce-
3 ment activities of the Office of Field Oper-
4 ations; and

5 “(iv) to otherwise conduct trade en-
6 forcement activities at the port of entry to
7 which the Commercial Enforcement Officer
8 has been assigned.

9 **“SEC. 6. ESTABLISHMENT OF INTERAGENCY CUSTOMS RE-**
10 **VIEW BOARD.**

11 “(a) ESTABLISHMENT.—There is established an
12 interagency Customs Review Board.

13 “(b) MEMBERSHIP.—The interagency Customs Re-
14 view Board shall be comprised of the Commissioner, the
15 Assistant Secretary for Policy in the Department of
16 Homeland Security, the Assistant Secretary for Tax Pol-
17 icy in the Department of the Treasury, the Under Sec-
18 retary for International Trade in the Department of Com-
19 merce, and 1 Deputy United States Trade Representative
20 designated by the United States Trade Representative to
21 serve on the interagency Customs Review Board. The
22 interagency Customs Review Board shall be cochaired by
23 the Commissioner and the Assistant Secretary for Tax
24 Policy in the Department of the Treasury.

1 “(c) DUTIES.—Before the U.S. Customs and Border
 2 Protection Agency may publicly propose or adopt a pro-
 3 posed change to a customs regulation, interpretation, or
 4 practice, the interagency Customs Review Board shall re-
 5 view the proposed change to determine if the proposed
 6 change conforms to the international trade obligations of
 7 the United States.”.

8 (c) CONFORMING AMENDMENT.—Section 5315 of
 9 title 5, United States Code, is amended by adding at the
 10 end the following:

11 “Principal Deputy Commissioner of U.S. Cus-
 12 toms and Border Protection, Department of Home-
 13 land Security.”.

14 **SEC. 103. SEPARATE BUDGET FOR U.S. CUSTOMS AND BOR-**
 15 **DER PROTECTION AGENCY.**

16 (a) IN GENERAL.—The President shall include in
 17 each budget transmitted to Congress under section 1105
 18 of title 31, United States Code, 2 separate budget requests
 19 for the U.S. Customs and Border Protection Agency—

20 (1) 1 for the commercial operations of the
 21 Agency; and

22 (2) 1 for the noncommercial operations of the
 23 Agency.

24 (b) REPEAL.—

1 (1) IN GENERAL.—Section 414 of the Home-
 2 land Security Act of 2002 (6 U.S.C. 214) is hereby
 3 repealed.

4 (2) CONFORMING AMENDMENT.—The table of
 5 contents for the Homeland Security Act of 2002 is
 6 amended by striking the item relating to section 414
 7 and inserting the following:

“Sec. 414. Reserved.”.

8 **SEC. 104. REVOLVING FUND.**

9 The matter under the heading “REVOLVING FUND,
 10 BUREAU OF CUSTOMS” in the Treasury and Post Office
 11 Departments Appropriation Act, 1950 (63 Stat. 360,
 12 chapter 286; 19 U.S.C. 2074), is amended by striking
 13 “United States Customs Service” and inserting “U.S.
 14 Customs and Border Protection Agency”.

15 **SEC. 105. ADVANCES IN FOREIGN COUNTRIES.**

16 The first section of the Act of May 6, 1939 (53 Stat.
 17 660, chapter 115; 19 U.S.C. 2076), is amended by strik-
 18 ing “United States Customs Service” and inserting “U.S.
 19 Customs and Border Protection Agency or the U.S. Immi-
 20 gration and Customs Enforcement Agency”.

21 **SEC. 106. ADVANCES FOR ENFORCEMENT OF CUSTOMS**
 22 **PROVISIONS.**

23 Section 2 of the Act of August 7, 1939 (53 Stat.
 24 1263, chapter 566; 19 U.S.C. 2077), is amended to read
 25 as follows:

1 **“SEC. 2. ADVANCES FOR ENFORCEMENT OF CUSTOMS PRO-**
2 **VISIONS.**

3 “The Commissioner of U.S. Customs and Border
4 Protection and the Director of U.S. Immigration and Cus-
5 toms Enforcement, with the approval of the Secretary of
6 Homeland Security and the Secretary of the Treasury, are
7 each authorized to direct the advance of funds by the Fis-
8 cal Service in the Department of the Treasury, in connec-
9 tion with the enforcement of the customs and trade laws
10 of the United States (as defined in section 2 of the Cus-
11 toms Facilitation and Trade Enforcement Reauthorization
12 Act of 2009).”.

13 **SEC. 107. CERTIFICATION OF REASON FOR ADVANCE.**

14 Section 3 of the Act of August 7, 1939 (53 Stat.
15 1263, chapter 566; 19 U.S.C. 2078), is amended by strik-
16 ing “Commissioner of Customs” and inserting “Commis-
17 sioner of U.S. Customs and Border Protection or the Di-
18 rector of U.S. Immigration and Customs Enforcement”.

19 **SEC. 108. PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR**
20 **REIMBURSEMENT.**

21 Section 4 of the Act of August 7, 1939 (53 Stat.
22 1263, chapter 566; 19 U.S.C. 2079), is amended to read
23 as follows:

1 **“SEC. 4. PAYMENTS IN FOREIGN COUNTRIES; CLAIMS FOR**
 2 **REIMBURSEMENT.**

3 “The provisions of this Act shall not affect payments
 4 made for the U.S. Customs and Border Protection Agency
 5 or the U.S. Immigration and Customs Enforcement Agen-
 6 cy in foreign countries, or the right of any officer or em-
 7 ployee of such Agencies to claim reimbursement for per-
 8 sonal funds expended in connection with the enforcement
 9 of the customs and trade laws of the United States (as
 10 defined in section 2 of the Customs Facilitation and Trade
 11 Enforcement Reauthorization Act of 2009).”.

12 **SEC. 109. CUSTOMS ADMINISTRATION.**

13 Section 113 of the Customs and Trade Act of 1990
 14 (19 U.S.C. 2082) is amended to read as follows:

15 **“SEC. 113. CUSTOMS ADMINISTRATION.**

16 “(a) IN GENERAL.—The Commissioner of U.S. Cus-
 17 toms and Border Protection and the Director of U.S. Im-
 18 migration and Customs Enforcement each shall—

19 “(1) develop and implement accounting systems
 20 that accurately determine and report the allocation
 21 of the personnel and other resources of the U.S.
 22 Customs and Border Protection Agency and the
 23 U.S. Immigration and Customs Enforcement Agency
 24 among the various operational functions of each
 25 Agency, including merchandise processing and cus-
 26 toms and trade law enforcement; and

1 “(2) develop and implement periodic labor dis-
 2 tribution surveys of major workforce activities within
 3 the U.S. Customs and Border Protection Agency
 4 and the U.S. Immigration and Customs Enforce-
 5 ment Agency to determine the cost of the various
 6 operational functions of each Agency and the extent
 7 to which the costs of one Agency are covered by the
 8 other Agency.

9 “(b) SURVEY REPORTS.—The Commissioner of U.S.
 10 Customs and Border Protection and the Director of U.S.
 11 Immigration and Customs Enforcement shall each, not
 12 later than June 30, 2010, submit to the Committee on
 13 Finance of the Senate and the Committee on Ways and
 14 Means of the House of Representatives a report on the
 15 results of the first surveys implemented under paragraph
 16 (2) of subsection (a).”.

17 **SEC. 110. PERSONNEL.**

18 (a) IN GENERAL.—Subsection (a) of section 401 of
 19 the Security and Accountability for Every Port Act of
 20 2006 (6 U.S.C. 115(a)) is amended to read as follows:

21 “(a) DIRECTOR OF TRADE POLICY.—

22 “(1) IN GENERAL.—There shall be in the Office
 23 of Policy and Planning of the Department of Home-
 24 land Security a Director of Trade Policy, who
 25 shall—

1 “(A) coordinate with the Commissioner of
2 U.S. Customs and Border Protection to ensure
3 that the economic security interests of the
4 United States associated with international
5 trade are considered in the development and
6 implementation of policies within the Depart-
7 ment of Homeland Security; and

8 “(B) submit to the Committee on Finance
9 of the Senate and the Committee on Ways and
10 Means of the House of Representatives, not
11 later than December 15 of each year, a report
12 describing how the Department of Homeland
13 Security accounted for the economic security in-
14 terests of the United States associated with
15 international trade in developing and imple-
16 menting policies during the preceding fiscal
17 year.

18 “(2) QUALIFICATIONS.—The Director of Trade
19 Policy shall have significant experience in the devel-
20 opment, operation, or administration of United
21 States trade policy, and shall be compensated at a
22 rate of pay that is not less than the rate of pay for
23 grade 14 of the General Schedule under section
24 5332 of title 5, United States Code.”.

1 (b) NEW PERSONNEL.—Subsection (c) of section 412
 2 of the Homeland Security Act of 2002 (16 U.S.C. 212(c))
 3 is amended to read as follows:

4 “(c) NEW PERSONNEL.—Not later than 90 days
 5 after the date of the enactment of the Customs Facilita-
 6 tion and Trade Enforcement Reauthorization Act of 2009,
 7 the Secretary of the Treasury shall designate and dedicate
 8 not less than 5 full-time equivalent personnel to work ex-
 9 clusively with the Deputy Assistant Secretary of the
 10 Treasury for Tax, Trade, and Tariff Policy in the per-
 11 formance and oversight of customs revenue functions.”.

12 **SEC. 111. AUTHORIZATION OF APPROPRIATIONS.**

13 (a) IN GENERAL.—Section 301 of the Customs Pro-
 14 cedural Reform and Simplification Act of 1978 (19 U.S.C.
 15 2075) is amended by redesignating subsection (h) as sub-
 16 section (i) and by striking subsections (a) through (g) and
 17 inserting the following:

18 “(a) IN GENERAL.—

19 “(1) FISCAL YEARS BEGINNING OCTOBER 1,
 20 2009.—For the fiscal year beginning October 1,
 21 2009, and each fiscal year thereafter, there are au-
 22 thorized to be appropriated to the Department of
 23 Homeland Security for the U.S. Customs and Bor-
 24 der Protection Agency only such sums as may here-
 25 after be authorized by law.

1 “(2) REQUIREMENT FOR AUTHORIZATION.—

2 The authorization of the appropriations for the U.S.
3 Customs and Border Protection Agency for each fis-
4 cal year after fiscal year 2009 shall specify—

5 “(A) the amount authorized for the fiscal
6 year for the salaries and expenses of the Agency
7 in conducting commercial operations; and

8 “(B) the amount authorized for the fiscal
9 year for the salaries and expenses of the Agency
10 for other than commercial operations.

11 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
12 are authorized to be appropriated for the salaries and ex-
13 penses of the U.S. Customs and Border Protection Agency
14 that are incurred in commercial operations such sums as
15 are necessary for fiscal years 2010, 2011, and 2012.

16 “(c) CUSTOMS USER FEE ACCOUNT.—The monies
17 authorized to be appropriated pursuant to subsection (b)
18 for any fiscal year, except for such sums as may be nec-
19 essary for the salaries and expenses of the U.S. Customs
20 and Border Protection Agency that are incurred in con-
21 nection with the processing of merchandise that is exempt
22 from the fees imposed pursuant to section 13031(a) (9)
23 and (10) of the Consolidated Omnibus Budget Reconcili-
24 ation Act of 1985 (19 U.S.C. 58c(a) (9) and (10)) shall
25 be appropriated from the Customs User Fee Account.

1 “(d) MANDATORY 10-DAY DEFERMENT.—No part of
2 the funds appropriated under subsection (a) for any fiscal
3 year may be used to provide less time for the collection
4 of estimated duties than the 10-day deferment procedure
5 in effect on January 1, 1981.

6 “(e) OVERTIME PAY LIMITATIONS; WAIVER.—No
7 part of the funds appropriated pursuant to subsection (a)
8 for any fiscal year may be used for administrative ex-
9 penses to pay any employee of the U.S. Customs and Bor-
10 der Protection Agency overtime pay in an amount exceed-
11 ing \$35,000 unless the Secretary of Homeland Security,
12 or the designee of the Secretary, determines on an indi-
13 vidual basis that payment of overtime pay to such em-
14 ployee in an amount exceeding \$35,000 is necessary for
15 national security purposes, to prevent excessive costs, or
16 to meet emergency requirements of the Agency.

17 “(f) PAY COMPARABILITY AUTHORIZATION.—For the
18 fiscal year beginning October 1, 2009, and for each fiscal
19 year thereafter, there are authorized to be appropriated
20 to the Department of Homeland Security for salaries of
21 the U.S. Customs and Border Protection Agency such ad-
22 ditional sums as may be provided by law to reflect pay
23 rate changes made in accordance with the Federal Pay
24 Comparability Act of 1970 (Public Law 91–656; 84 Stat.
25 1946).

1 “(g) USE OF SAVINGS RESULTING FROM ADMINIS-
2 TRATIVE CONSOLIDATIONS.—If savings in salaries and ex-
3 penses result from the consolidation of administrative
4 functions within the U.S. Customs and Border Protection
5 Agency, the Commissioner of U.S. Customs and Border
6 Protection shall apply the savings, to the extent the sav-
7 ings are not needed to meet emergency requirements of
8 the Agency, to strengthening the commercial operations
9 of the Agency by increasing the number of personnel dedi-
10 cated to administering customs revenue functions.

11 “(h) ALLOCATION OF RESOURCES; REPORT TO CON-
12 GRESSIONAL COMMITTEES.—The Commissioner of U.S.
13 Customs and Border Protection shall notify the Com-
14 mittee on Finance of the Senate and the Committee on
15 Ways and Means of the House of Representatives at least
16 180 days prior to taking any action that would—

17 “(1) result in any significant reduction in force
18 of employees of the U.S. Customs and Border Pro-
19 tection Agency other than by means of attrition;

20 “(2) result in any significant reduction in hours
21 of operation or services rendered at any office of the
22 U.S. Customs and Border Protection Agency or any
23 United States port of entry;

24 “(3) eliminate or relocate any office of the U.S.
25 Customs and Border Protection Agency;

1 “(4) eliminate any United States port of entry;

2 or

3 “(5) significantly reduce the number of employ-
4 ees assigned to any office or any function of the
5 U.S. Customs and Border Protection Agency.”.

6 (b) RESOURCE OPTIMIZATION MODEL.—Subsection
7 (i) of section 301 of the Customs Procedural Reform and
8 Simplification Act of 1978, as redesignated by subsection
9 (a), is amended by striking “Resource Allocation Model”
10 each place it appears in the text and in the heading and
11 inserting “Resource Optimization Model”.

12 (c) CONFORMING AMENDMENTS.—

13 (1) IN GENERAL.—Subsection (c) of section 5
14 of the Act of February 13, 1911 (19 U.S.C. 267(c)),
15 is amended to read as follows:

16 “(c) LIMITATIONS.—

17 “(1) FISCAL YEAR CAP.—The aggregate of
18 overtime pay under subsection (a) of this section (in-
19 cluding commuting compensation under subsection
20 (a)(2)(B) of this section) and premium pay under
21 subsection (b) of this section that an employee of the
22 U.S. Customs and Border Protection may be paid in
23 any fiscal year may not exceed \$35,000 unless the
24 Secretary of Homeland Security, or the designee of
25 the Secretary, determines on an individual basis that

1 payment of overtime pay to such employee in an
 2 amount exceeding \$35,000 is necessary for national
 3 security purposes, to prevent excessive costs, or to
 4 meet emergency requirements of the Agency.

5 “(2) EXCLUSIVITY OF PAY UNDER THIS SEC-
 6 TION.—An employee of the U.S. Customs and Bor-
 7 der Protection Agency who receives overtime pay
 8 under subsection (a) of this section, or premium pay
 9 under subsection (b) of this section for time worked,
 10 may not receive pay or other compensation for that
 11 work under any other provision of law.”.

12 (2) BASIC PAY.—Section 8331(3)(G) of title 5,
 13 United States Code, is amended—

14 (A) by striking “a customs officer” and in-
 15 serting “employee of the U.S. Customs and
 16 Border Protection Agency”; and

17 (B) by striking “customs officers” and in-
 18 serting “such employees”.

19 **Subtitle B—Investigative Functions**

20 **SEC. 121. ESTABLISHMENT OF AGENCY.**

21 (a) IN GENERAL.—Section 442 of the Homeland Se-
 22 curity Act of 2002 (6 U.S.C. 252) is amended to read
 23 as follows:

1 **“SEC. 442. ESTABLISHMENT OF AGENCY; DIRECTOR.**

2 “(a) ESTABLISHMENT OF AGENCY.—There shall be
3 in the Department of Homeland Security an agency to be
4 known as the U.S. Immigration and Customs Enforce-
5 ment Agency.

6 “(b) ESTABLISHMENT OF DIRECTOR.—

7 “(1) IN GENERAL.—The head of the U.S. Im-
8 migration and Customs Enforcement Agency shall
9 be a Director of U.S. Immigration and Customs En-
10 forcement, who shall—

11 “(A) be appointed by the President, by and
12 with the advice and consent of the Senate;

13 “(B) carry out the duties and powers de-
14 scribed in subsection (c), prescribed by law, and
15 prescribed by the Secretary of Homeland Secu-
16 rity;

17 “(C) report directly to the Deputy Sec-
18 retary of Homeland Security;

19 “(D) have a minimum of 5 years profes-
20 sional experience in law enforcement, and a
21 minimum of 5 years of management experience;
22 and

23 “(E) advise the Secretary with respect to
24 any policy or operation of the U.S. Immigration
25 and Customs Enforcement Agency that may af-
26 fect the Bureau of Citizenship and Immigration

1 Services established under subtitle E (redesig-
2 nated as the U.S. Citizenship and Immigration
3 Services), including potentially conflicting poli-
4 cies or operations.

5 “(2) COMMITTEE REFERRAL.—As an exercise
6 of the rulemaking power of the Senate, any nomina-
7 tion for Director of U.S. Immigration and Customs
8 Enforcement shall be referred to the Committee on
9 Finance. If the Committee on Finance has not re-
10 ported such nomination at the close of the 30th day
11 after its referral to such Committee, the Committee
12 shall be automatically discharged from further con-
13 sideration of such nomination and such nomination
14 shall be referred to the Committee on the Judiciary.

15 “(c) DUTIES OF DIRECTOR.—The duties of the Di-
16 rector shall include—

17 “(1) establishing and overseeing the administra-
18 tion of policies with respect to functions—

19 “(A) performed under the detention and
20 removal program, the intelligence program, and
21 the investigations program that were trans-
22 ferred to the Under Secretary for Border and
23 Transportation Security by section 441 of this
24 Act and delegated to the Assistant Secretary
25 for Immigration and Customs Enforcement on

1 the day before the date of the enactment of the
2 Customs Facilitation and Trade Enforcement
3 Reauthorization Act of 2009; and

4 “(B) otherwise vested in the Assistant Sec-
5 retary on the day before the date of the enact-
6 ment of the Customs Facilitation and Trade
7 Enforcement Reauthorization Act of 2009;

8 “(2) advising the Secretary of Homeland Secu-
9 rity with respect to any policy or operation of the
10 U.S. Immigration and Customs Enforcement Agency
11 that may affect the U.S. Citizenship and Immigra-
12 tion Services established under subtitle E, including
13 potentially conflicting policies and operations;

14 “(3) conducting investigations of violations of
15 the customs and trade laws of the United States (as
16 that term is defined in section 2 of the Customs Fa-
17 cilitation and Trade Enforcement Reauthorization
18 Act of 2009), including investigations of violations of
19 laws that protect intellectual property rights or pro-
20 hibit the importation of goods that pose a threat to
21 the health or safety of consumers in the United
22 States; and

23 “(4) coordinating with the Commissioner of
24 U.S. Customs and Border Protection to ensure the
25 development and implementation of the Joint Stra-

1 tegic Plan required under section 123A of the Cus-
2 toms and Trade Act of 1990.

3 “(d) DEPUTY DIRECTOR.—The Secretary of Home-
4 land Security is authorized to appoint, in the U.S. Immi-
5 gration and Customs Enforcement Agency established by
6 subsection (a), 1 Deputy Director. Such appointment shall
7 be subject to the provisions of the civil service laws and
8 the salary shall be fixed in accordance with chapter 51
9 and subchapter III of chapter 53 of title 5, United States
10 Code.

11 “(e) ABSENCE OR DISABILITY OF DIRECTOR OR
12 DEPUTY DIRECTOR.—

13 “(1) DIRECTOR.—The Secretary of Homeland
14 Security is authorized to designate an officer of the
15 U.S. Immigration and Customs Enforcement Agency
16 to serve as Director of U.S. Immigration and Cus-
17 toms Enforcement, during the absence or disability
18 of the Director of U.S. Immigration and Customs
19 Enforcement, or in the event that there is no Direc-
20 tor of U.S. Immigration and Customs Enforcement.

21 “(2) DEPUTY DIRECTOR.—The Secretary of
22 Homeland Security is authorized to designate an of-
23 ficer of the U.S. Immigration and Customs Enforce-
24 ment Agency to serve as Deputy Director of U.S.
25 Immigration and Customs Enforcement, during the

1 absence or disability of the Deputy Director of U.S.
2 Immigration and Customs Enforcement, or in the
3 event that there is no Deputy Director of U.S. Im-
4 migration and Customs Enforcement.

5 “(f) ADDITIONAL OFFICERS.—The Secretary of
6 Homeland Security may appoint such officers as are nec-
7 essary to manage the individual offices within the U.S.
8 Immigration and Customs Enforcement Agency. Appoint-
9 ments under this paragraph shall be subject to the provi-
10 sions of the civil service laws, and the salaries shall be
11 fixed in accordance with chapter 51 and subchapter III
12 of chapter 53 of title 5, United States Code.

13 “(g) DUTIES OF PERSONNEL.—The personnel of the
14 U.S. Immigration and Customs Enforcement Agency shall
15 conduct and prosecute investigations for the enforcement
16 of the customs and trade laws of the United States, and
17 perform such other duties as are prescribed by law or by
18 the Secretary of Homeland Security.

19 “(h) PROGRAM TO COLLECT INFORMATION RELAT-
20 ING TO FOREIGN STUDENTS.—The Director of the U.S.
21 Immigration and Customs Enforcement Agency shall be
22 responsible for administering the program to collect infor-
23 mation relating to nonimmigrant foreign students and
24 other exchange program participants described in section
25 641 of the Illegal Immigration Reform and Immigrant Re-

1 sponsibility Act of 1996 (8 U.S.C. 1372), including the
 2 Student and Exchange Visitor Information System estab-
 3 lished under that section, and shall use such information
 4 to carry out the enforcement functions of the U.S. Immi-
 5 gration and Customs Enforcement Agency.

6 “(i) CHIEF OF POLICY AND STRATEGY.—

7 “(1) IN GENERAL.—There shall be a position of
 8 Chief of Policy and Strategy for the U.S. Immigra-
 9 tion and Customs Enforcement Agency.

10 “(2) FUNCTIONS.—In consultation with per-
 11 sonnel in local offices of the U.S. Immigration and
 12 Customs Enforcement Agency, the Chief of Policy
 13 and Strategy shall be responsible for—

14 “(A) making policy recommendations and
 15 performing policy research and analysis on im-
 16 migration enforcement issues; and

17 “(B) coordinating immigration policy
 18 issues with the Chief of Policy and Strategy for
 19 the Bureau of Citizenship and Immigration
 20 Services established under subtitle E, as appro-
 21 priate.

22 “(j) LEGAL ADVISOR.—There shall be a principal
 23 legal advisor to the Director of U.S. Immigration and Cus-
 24 toms Enforcement. The legal advisor shall provide special-
 25 ized legal advice to the Director of Immigration and Cus-

1 toms Enforcement and shall represent the U.S. Immigra-
2 tion and Customs Enforcement Agency in all exclusion,
3 deportation, and removal proceedings before the Executive
4 Office for Immigration Review.”.

5 (b) COMPENSATION.—

6 (1) IN GENERAL.—Section 5315 of title 5,
7 United States Code, is amended by adding at the
8 end the following:

9 “Director of U.S. Immigration and Customs
10 Enforcement, Department of Homeland Security.”.

11 (2) CONTINUATION IN OFFICE.—The individual
12 serving as Assistant Secretary for Immigration and
13 Customs Enforcement of the Department of Home-
14 land Security on the day before the date of the en-
15 actment of this Act may serve as Director of U.S.
16 Immigration and Customs Enforcement until the
17 earlier of—

18 (A) the date on which such individual is no
19 longer eligible to serve as Assistant Secretary;
20 or

21 (B) the date on which a person nominated
22 by the President to be the Director of U.S. Im-
23 migration and Customs Enforcement is con-
24 firmed by the Senate.

(3) REFERENCE.—On and after the effective date of this Act, any reference to the Assistant Secretary for Immigration and Customs Enforcement of the Department of Homeland Security, shall be deemed to be a reference to the Director of U.S. Immigration and Customs Enforcement.

(c) CONFORMING AMENDMENTS.—

(1) SUBTITLE D.—The heading for subtitle D of title IV of the Homeland Security Act of 2002 is amended by striking the matter preceding section 441 and inserting the following:

**“Subtitle D—Enforcement
Functions”.**

(2) TABLE OF CONTENTS.—The table of contents for the Homeland Security Act of 2002 is amended—

(A) by striking the item relating to section 442 and inserting the following:

“Sec. 442. Establishment of Agency; Director.”;

and

(B) by striking the item relating to subtitle D of title IV and inserting the following:

“Subtitle D—Enforcement Functions”.

(3) DIRECTOR OF THE BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—Section 451(a)(2)(C) of the Homeland Security Act of 2002

1 (6 U.S.C. 271(a)(2)(C)) is amended by striking “As-
 2 sistant Secretary of the Bureau of Border Security”
 3 and inserting “Director of U.S. Immigration and
 4 Customs Enforcement”.

5 **SEC. 122. SEPARATE BUDGET FOR U.S. IMMIGRATION AND**
 6 **CUSTOMS ENFORCEMENT AGENCY.**

7 The President shall include in each budget trans-
 8 mitted to Congress under section 1105 of title 31, United
 9 States Code, a separate budget request for the U.S. Immi-
 10 gration and Customs Enforcement Agency—

11 (1) 1 for the customs operations of the Agency;

12 and

13 (2) 1 for the operations of the Agency other
 14 than customs operations.

15 **SEC. 123. UNDERCOVER INVESTIGATIVE OPERATIONS.**

16 Section 3131 of the Customs Enforcement Act of
 17 1986 (19 U.S.C. 2081) is amended to read as follows:

18 **“SEC. 3131. UNDERCOVER INVESTIGATIVE OPERATIONS OF**
 19 **THE U.S. IMMIGRATION AND CUSTOMS EN-**
 20 **FORCEMENT AGENCY.**

21 “(a) CERTIFICATION REQUIRED FOR EXEMPTION OF
 22 UNDERCOVER OPERATIONS FROM CERTAIN LAWS.—With
 23 respect to any undercover investigative operation of the
 24 U.S. Immigration and Customs Enforcement Agency (in
 25 this section referred to as the ‘Agency’) that is necessary

1 for the detection and prosecution of offenses against the
2 United States that are within the jurisdiction of the Sec-
3 retary of Homeland Security—

4 “(1) sums authorized to be appropriated may
5 be used—

6 “(A) to purchase property, buildings, and
7 other facilities, and to lease space, within the
8 United States, the District of Columbia, and
9 the territories and possessions of the United
10 States without regard to—

11 “(i) sections 1341 and 3342 of title
12 31, United States Code;

13 “(ii) sections 3732(a) and 3741 of the
14 Revised Statutes of the United States (41
15 U.S.C. 11(a) and 22);

16 “(iii) section 8141 of title 40, United
17 States Code; and

18 “(iv) sections 304(a) and 305 of the
19 Federal Property and Administrative Serv-
20 ices Act of 1949 (41 U.S.C. 254(a) and
21 255); and

22 “(B) to establish or to acquire proprietary
23 corporations or business entities as part of the
24 undercover operation, and to operate such cor-
25 porations or business entities without regard to

1 sections 9102 and 9103 of title 31, United
2 States Code;

3 “(2) sums authorized to be appropriated for the
4 Agency and the proceeds from the undercover oper-
5 ation, may be deposited in banks or other financial
6 institutions without regard to the provisions of sec-
7 tion 648 of title 18 and section 3302 of title 31,
8 United States Code; and

9 “(3) the proceeds from the undercover oper-
10 ation may be used to offset necessary and reasonable
11 expenses incurred in such operation without regard
12 to the provision of section 3302 of title 31, United
13 States Code;

14 only upon written certification of the Director of the U.S.
15 Immigration and Customs Enforcement Agency (or, if
16 designated by the Director, such other officer within the
17 U.S. Immigration and Customs Enforcement Agency) that
18 any action authorized by paragraph (1), (2), or (3) of this
19 subsection is necessary for the conduct of such undercover
20 operation.

21 “(b) LIQUIDATION OF CORPORATIONS AND BUSINESS
22 ENTITIES.—If a corporation or business entity established
23 or acquired as part of an undercover operation under sub-
24 section (a)(1)(B) of this section with a net value over
25 \$50,000 is to be liquidated, sold, or otherwise disposed

1 of, the U.S. Immigration and Customs Enforcement Agen-
2 cy, as much in advance as the Director (or, if designated
3 by the Director, such other officer within the Agency) de-
4 termines is practicable, shall report the circumstances to
5 the Secretary of Homeland Security and the Secretary of
6 the Treasury. The proceeds of the liquidation, sale, or
7 other disposition, after obligations are met, shall be depos-
8 ited in the Treasury of the United States as miscellaneous
9 receipts.

10 “(c) DEPOSITS OF PROCEEDS.—As soon as the pro-
11 ceeds from an undercover investigative operation with re-
12 spect to which an action is authorized and carried out
13 under paragraphs (2) and (3) of subsection (a) of this sec-
14 tion are no longer necessary for the conduct of such oper-
15 ation, such proceeds, or the balance of such proceeds re-
16 maining at the time, shall be deposited into the Treasury
17 of the United States as miscellaneous receipts.

18 “(d) AUDITS.—

19 “(1) IN GENERAL.—The Director of U.S. Immi-
20 gration and Customs Enforcement shall—

21 “(A) conduct a detailed financial audit of
22 each undercover investigative operation that is
23 closed in each fiscal year;

1 “(B) submit the results of the audit in
2 writing to the Secretary of Homeland Security
3 and the Secretary of the Treasury; and

4 “(C) not later than 180 days after such
5 undercover operation is closed, submit a report
6 to the Congress concerning such audit.

7 “(2) REPORT.—The Director shall also submit
8 a report annually to the Congress specifying with re-
9 spect to the Agency’s undercover investigative oper-
10 ations—

11 “(A) the number, by program, of under-
12 cover investigative operations pending at the
13 end of the 1-year period for which such report
14 is submitted;

15 “(B) the number, by program, of under-
16 cover investigative operations commenced in the
17 1-year period preceding the period for which
18 such report is submitted; and

19 “(C) the number, by program, of under-
20 cover investigative operations closed in the 1-
21 year period preceding the period for which such
22 report is submitted and, with respect to each
23 such closed undercover operation, the results
24 obtained and any civil claims made with respect
25 thereto.

1 “(e) DEFINITIONS.—For purposes of subsection (d),
2 the following definitions apply:

3 “(1) CLOSED.—The term ‘closed’ refers to the
4 earliest point in time at which—

5 “(A) all criminal proceedings (other than
6 appeals) are concluded; or

7 “(B) covert activities are concluded, which-
8 ever occurs later.

9 “(2) EMPLOYEES.—The term ‘employees’
10 means employees of the U.S. Immigration and Cus-
11 toms Enforcement Agency, as defined in section
12 2105 of title 5, United States Code.

13 “(3) UNDERCOVER INVESTIGATIVE OPERATION;
14 UNDERCOVER OPERATION.—

15 “(A) IN GENERAL.—The terms ‘undercover
16 investigative operation’ and ‘undercover oper-
17 ation’ mean any undercover investigative oper-
18 ations of the U.S. Immigration and Customs
19 Enforcement Agency—

20 “(i) in which—

21 “(I) the gross receipts (excluding
22 interest earned) exceed \$50,000; or

23 “(II) expenditures (other than
24 expenditures for salaries of employees)
25 exceed \$150,000; and

1 “(ii) which is exempt from section
 2 3302 or 9102 of title 31, United States
 3 Code.

4 “(B) EXCEPTION.—Clauses (i) and (ii) of
 5 subparagraph (A) shall not apply with respect
 6 to the report required under paragraph (2) of
 7 subsection (d) of this section.”.

8 **SEC. 124. AUTHORIZATION OF APPROPRIATIONS.**

9 Title III of the Customs Procedural Reform and Sim-
 10 plification Act of 1978 (19 U.S.C. 2075) is amended by
 11 inserting after section 301 the following:

12 **“SEC. 302. AUTHORIZATION OF APPROPRIATIONS FOR CER-**
 13 **TAIN CUSTOMS ENFORCEMENT ACTIVITIES.**

14 “(a) IN GENERAL.—

15 “(1) FISCAL YEARS BEGINNING ON OR AFTER
 16 OCTOBER 1, 2009.—For the fiscal year beginning Oc-
 17 tober 1, 2009, and each fiscal year thereafter, there
 18 are authorized to be appropriated to the Department
 19 of Homeland Security for the U.S. Immigration and
 20 Customs Enforcement Agency only such sums as
 21 may hereafter be authorized by law.

22 “(2) SPECIFICATION OF AMOUNTS.—The au-
 23 thorization of the appropriations for the U.S. Immi-
 24 gration and Customs Enforcement Agency for each
 25 fiscal year after fiscal year 2009 shall specify—

1 “(A) the amount authorized for the fiscal
 2 year for the salaries and expenses of the Agency
 3 in conducting customs operations; and

4 “(B) the amount authorized for the fiscal
 5 year for the salaries and expenses of the Agency
 6 for other than customs operations.

7 “(b) AUTHORIZATION OF APPROPRIATIONS.—There
 8 are authorized to be appropriated for the salaries and ex-
 9 penses of the U.S. Immigration and Customs Enforcement
 10 Agency that are incurred in customs operations such sums
 11 as are necessary for fiscal years 2010, 2011, and 2012.”.

12 **Subtitle C—Joint Strategic Plan**

13 **SEC. 131. JOINT STRATEGIC PLAN.**

14 (a) IN GENERAL.—Title I of the Customs and Trade
 15 Act of 1990 (Public Law 101–382; 104 Stat. 629) is
 16 amended by inserting after section 123, the following new
 17 section:

18 **“SEC. 123A. JOINT STRATEGIC PLAN.**

19 “(a) IN GENERAL.—Not later than June 30, 2010,
 20 and every 2 years thereafter, the Commissioner of U.S.
 21 Customs and Border Protection and the Director of U.S.
 22 Immigration and Customs Enforcement shall jointly de-
 23 velop and submit to the Committee on Finance of the Sen-
 24 ate and the Committee on Ways and Means of the House
 25 of Representatives, a Joint Strategic Plan.

1 “(b) CONTENTS.—The Joint Strategic Plan required
2 under this section shall be comprised of a comprehensive
3 multiyear plan for enforcing the customs and trade laws
4 of the United States (as defined in section 2(2) of the Cus-
5 toms Facilitation and Trade Enforcement Reauthorization
6 Act of 2009) and for facilitating the international trade
7 of the United States, and shall include—

8 “(1) a summary of actions taken to date to bet-
9 ter enforce the customs and trade laws of the United
10 States and to better facilitate the international trade
11 of the United States, including a description and
12 analysis of specific performance measures to evalu-
13 ate the progress of the U.S. Customs and Border
14 Protection Agency and the U.S. Immigration and
15 Customs Enforcement Agency in meeting each such
16 responsibility;

17 “(2) a statement of objectives and plans for
18 further improving the enforcement of the customs
19 and trade laws of the United States and the facilita-
20 tion of the international trade of the United States;

21 “(3) a specific identification of priority trade
22 issues that pose a high risk to public health and
23 safety or to the public fisc, and a description of
24 strategies and plans for addressing each such risk;

1 “(4) a description of efforts made to improve
2 consultation and coordination among Federal agen-
3 cies, and in particular between the U.S. Customs
4 and Border Protection Agency and the U.S. Immig-
5 ration and Customs Enforcement Agency, regard-
6 ing the enforcement of the customs and trade laws
7 of the United States and the facilitation of the inter-
8 national trade of the United States;

9 “(5) a description of the training that has oc-
10 curred to date within the U.S. Customs and Border
11 Protection Agency and the U.S. Immigration and
12 Customs Enforcement Agency to improve the en-
13 forcement of the customs and trade laws of the
14 United States and the facilitation of the inter-
15 national trade of the United States;

16 “(6) a specific identification of any domestic or
17 international best practices that may further im-
18 prove the enforcement of the customs and trade laws
19 of the United States and the facilitation of the inter-
20 national trade of the United States; and

21 “(7) any legislative recommendations to further
22 improve the enforcement of the customs and trade
23 laws of the United States or the facilitation of the
24 international trade of the United States.

25 “(c) CONSULTATIONS.—

1 “(1) IN GENERAL.—In developing the Joint
2 Strategic Plan required under this section, the Com-
3 missioner and the Director shall consult with—

4 “(A) appropriate officials from the relevant
5 Federal departments and agencies, including—

6 “(i) the Department of the Treasury;

7 “(ii) the Department of Agriculture;

8 “(iii) the Department of Commerce;

9 “(iv) the Department of Justice;

10 “(v) the Department of the Interior;

11 “(vi) the Department of Health and
12 Human Services;

13 “(vii) the Food and Drug Administra-
14 tion;

15 “(viii) the Consumer Product Safety
16 Commission; and

17 “(ix) the Office of the United States
18 Trade Representative; and

19 “(B) the Commercial Customs Operations
20 Advisory Committee and the Trade Support
21 Network.

22 “(2) OTHER CONSULTATIONS.—In developing
23 the Joint Strategic Plan required under this section,
24 the Commissioner and the Director shall seek to
25 consult with—

1 “(A) appropriate officials from relevant
 2 foreign law enforcement agencies and inter-
 3 national organizations, including the World
 4 Customs Organization; and

5 “(B) private sector entities as defined in
 6 section 2(4) of the Customs Facilitation and
 7 Trade Enforcement Reauthorization Act of
 8 2009.”.

9 (b) CONFORMING AMENDMENT.—The table of con-
 10 tents for the Customs and Trade Act of 1990 is amended
 11 by inserting after the item relating to section 123, the fol-
 12 lowing new item:

“Sec. 123A. Joint Strategic Plan.”.

13 **TITLE II—CUSTOMS FACILITA-**
 14 **TION, TRADE ENFORCEMENT,**
 15 **AND TRANSPARENCY**
 16 **Subtitle A—Customs Facilitation**
 17 **and Transparency**

18 **SEC. 201. TRADE BENEFITS UNDER THE CUSTOMS-TRADE**
 19 **PARTNERSHIP AGAINST TERRORISM.**

20 (a) IN GENERAL.—The Secretary of Homeland Secu-
 21 rity, acting through the Commissioner of U.S. Customs
 22 and Border Protection and in consultation with the enti-
 23 ties specified in subsection (b), shall develop and imple-
 24 ment additional trade benefits to be provided to Tier 1,
 25 Tier 2, and Tier 3 participants in the Customs-Trade

1 Partnership Against Terrorism under subtitle B of title
2 II of the Security and Accountability for Every Port Act
3 of 2006 (6 U.S.C. 961 et seq.).

4 (b) ENTITIES SPECIFIED.—The entities specified in
5 this subsection are—

6 (1) the Commercial Customs Operations Advi-
7 sory Committee established under section 204;

8 (2) the Trade Support Network;

9 (3) the Committee on Finance of the Senate;

10 and

11 (4) the Committee on Ways and Means of the
12 House of Representatives.

13 (c) REPORTS.—

14 (1) IN GENERAL.—Not later than December 31,
15 2010, the Secretary of Homeland Security, acting
16 through the Commissioner of U.S. Customs and
17 Border Protection, shall submit to the Committee on
18 Finance of the Senate and the Committee on Ways
19 and Means of the House of Representatives a re-
20 port—

21 (A) describing the trade benefits provided
22 to Tier 1, Tier 2, and Tier 3 participants in the
23 Customs-Trade Partnership Against Terrorism
24 as of the date on which the report is submitted;
25 and

1 (B) describing the additional trade benefits
 2 developed under subsection (a) that have not
 3 been implemented as of the date on which the
 4 report is submitted.

5 (2) PROGRESS REPORT.—Not later than De-
 6 cember 31, 2011, and December 31, 2012, the Com-
 7 missioner shall submit to the Committee on Finance
 8 of the Senate and the Committee on Ways and
 9 Means of the House of Representatives a report on
 10 the progress made in providing the additional trade
 11 benefits developed under subsection (a).

12 **SEC. 202. CUSTOMS FACILITATION PARTNERSHIP PRO-**
 13 **GRAM.**

14 Title IV of the Tariff Act of 1930 (19 U.S.C. 1401
 15 et seq.) is amended by adding at the end the following:

16 **“SEC. 499A. CUSTOMS FACILITATION PARTNERSHIP PRO-**
 17 **GRAM.**

18 “(a) ESTABLISHMENT.—

19 “(1) IN GENERAL.—The Commissioner of U.S.
 20 Customs and Border Protection shall establish a vol-
 21 untary government-private sector program to be
 22 known as the ‘Customs Facilitation Partnership
 23 Program’ (in this section referred to as the ‘Partner-
 24 ship Program’) to facilitate the entry of merchandise
 25 into the United States and to provide benefits de-

1 scribed in paragraph (3) to persons described in
2 paragraph (2) that meet or exceed the requirements
3 of the Partnership Program established under sub-
4 section (b)(2).

5 “(2) PERSONS DESCRIBED.—Persons described
6 in this paragraph are persons involved in the entry
7 of merchandise into the United States, including
8 intermodal transportation system providers, contract
9 logistics providers, air, land, and sea carriers, cus-
10 toms brokers, importers, and forwarders.

11 “(3) BENEFITS DESCRIBED.—

12 “(A) IN GENERAL.—The benefits described
13 in this paragraph are such benefits as the Com-
14 missioner considers appropriate for the purpose
15 of facilitating the entry of merchandise into the
16 United States, including—

17 “(i) taking into account the participa-
18 tion of persons in the Partnership Pro-
19 gram in assessing the risk posed by such
20 persons for the purposes of commercial
21 risk assessment targeting under section
22 211; and

23 “(ii) to the extent practicable, giving
24 priority to persons participating in the
25 Partnership Program with respect to the

clearance of merchandise during activities to resume trade after an incident in which merchandise entering the United States was found to pose a threat to the health or safety of consumers in the United States.

“(B) CONSULTATION.—In developing benefits under subparagraph (A) to be provided to persons participating in the Partnership Program, the Commissioner shall consult with the Commercial Customs Operations Advisory Committee established under section 204 of the Customs Facilitation and Trade Enforcement Reauthorization Act of 2009.

“(b) APPLICATION FOR PARTICIPATION.—

“(1) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall establish procedures in accordance with this subsection for persons described in subsection (a)(2) to apply to participate in the Partnership Program.

“(2) MINIMUM REQUIREMENTS.—

“(A) IN GENERAL.—The Commissioner shall establish minimum requirements for participation in the Partnership Program.

“(B) SPECIFIC CONSIDERATIONS.—In determining whether a person meets the minimum

1 requirements for participation in the Partner-
2 ship Program, the following shall be considered:

3 “(i) The person’s history of entering
4 merchandise into the United States.

5 “(ii) The persons’s history of compli-
6 ance with the customs and trade laws of
7 the United States (as defined in section 2
8 of the Customs Facilitation and Trade En-
9 forcement Reauthorization Act of 2009),
10 including—

11 “(I) properly maintaining im-
12 porter of record numbers;

13 “(II) properly maintaining cus-
14 toms bonds as required by law; and

15 “(III) promptly responding to re-
16 quests from the U.S. Customs and
17 Border Protection Agency for infor-
18 mation or notices of action, liquidated
19 damages, or civil penalties.

20 “(3) CERTIFICATION AND VERIFICATION OF AP-
21 PPLICATIONS.—A person who applies to participate in
22 the Partnership Program may participate in the
23 Partnership Program after the Commissioner—

1 “(A) certifies the person as complying with
2 the requirements established under paragraph
3 (2); and

4 “(B) verifies the information contained in
5 the person’s application pursuant to paragraph
6 (4).

7 “(4) VERIFICATION OF APPLICATIONS.—

8 “(A) IN GENERAL.—The Commissioner
9 shall establish procedures for verifying the in-
10 formation contained in applications for partici-
11 pation in the Partnership Program. The
12 verification of such information may include a
13 document review or any other verification meth-
14 od that the Commissioner determines to be nec-
15 essary.

16 “(B) TIMING.—To the extent practicable,
17 the Commissioner shall verify the information
18 contained in an application for participation in
19 the Partnership Program not later than 90
20 days after receiving the application.

21 “(c) REVERIFICATIONS; MAINTENANCE OF ELIGI-
22 BILITY.—

23 “(1) REVERIFICATION OF PARTICIPANTS.—The
24 Commissioner of U.S. Customs and Border Protec-
25 tion shall establish—

1 “(A) a process for reverifying that persons
2 participating in the Partnership Program con-
3 tinue to meet the requirements established
4 under subsection (b)(2); and

5 “(B) a process by which persons partici-
6 pating in the Partnership Program are selected
7 for reverification—

8 “(i) based on an assessment of the
9 risk posed by such persons; or

10 “(ii) using random sampling.

11 “(2) CONSEQUENCES FOR LACK OF COMPLI-
12 ANCE.—If the Commissioner determines, in con-
13 ducting a reverification under paragraph (1) of a
14 person participating in the Partnership Program,
15 that the person fails to meet the requirements for
16 participation in the Partnership Program established
17 under subsection (b)(2), or if the Commissioner is
18 unable to reverify that the person meets those re-
19 quirements, the Commissioner may suspend all or
20 some of the benefits provided to the person under
21 the Partnership Program until the Commissioner is
22 able to reverify that the person meets those require-
23 ments.

24 “(d) FALSE OR MISLEADING INFORMATION.—If a
25 person participating in the Partnership Program inten-

tionally provides false or misleading information to the Commissioner of U.S. Customs and Border Protection in the application submitted under subsection (b)(1), during the verification process under subsection (b)(4), or during the reverification process under subsection (c), the Commissioner shall, in addition to any other penalty provided by law—

“(1) deny to the person the benefits provided to the person under the Partnership Program; and

“(2) prohibit the person from further participation in the Partnership Program.

“(e) APPEALS.—

“(1) IN GENERAL.—

“(A) APPEALS OF DENIALS OF APPLICATION.—A person who submits an application under subsection (b)(1) to participate in the Partnership Program may appeal a decision of the Commissioner of U.S. Customs and Border Protection denying participation in the Partnership Program under subsection (b)(3).

“(B) APPEALS OF DENIALS OF BENEFITS OR SUSPENSIONS OF PARTICIPATION.—A person who participates in the Partnership Program may appeal a decision of the Commissioner denying or suspending benefits provided to the

1 person under the Partnership Program under
2 subsection (c) or (d) or prohibiting the person
3 from further participation in the Partnership
4 Program under subsection (d).

5 “(2) FILING OF APPEAL.—A person who files
6 an appeal under paragraph (1) shall file the appeal
7 with the Commissioner not later than 90 days after
8 the date on which the person receives notice of the
9 decision of the Commissioner being appealed.

10 “(3) FINAL DETERMINATION.—The Commis-
11 sioner shall make a final determination with respect
12 to an appeal under paragraph (1) not later than 180
13 days after the date on which the appeal is filed
14 under paragraph (2).

15 “(f) ADMINISTRATIVE PROVISIONS.—

16 “(1) STAFFING.—The Commissioner of U.S.
17 Customs and Border Protection shall designate,
18 train, and maintain not fewer than 7 full-time equiv-
19 alent personnel in the Office of Trade of the U.S.
20 Customs and Border Protection Agency to admin-
21 ister the Partnership Program.

22 “(2) CONFIDENTIAL INFORMATION SAFE-
23 GUARDS.—The Commissioner, in consultation with
24 the Commercial Customs Operations Advisory Com-
25 mittee established under section 204 of the Customs

1 Facilitation and Trade Enforcement Reauthorization
2 Act of 2009, shall establish procedures to safeguard
3 confidential data collected, stored, or shared with the
4 U.S. Customs and Border Protection Agency or any
5 other Federal agency during the verification process
6 under subsection (b)(4) or the reverification process
7 under subsection (c)(1).

8 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
9 are authorized to be appropriated such sums as are nec-
10 essary to carry out the provisions of this section.”.

11 **SEC. 203. CONSULTATIONS WITH RESPECT TO MUTUAL**
12 **RECOGNITION AGREEMENTS.**

13 Not later than 30 days before entering into a Mutual
14 Recognition Arrangement or similar agreement between
15 the United States and a foreign government providing for
16 mutual recognition of supply chain security programs, the
17 Secretary of Homeland Security shall consult with the
18 Committee on Finance of the Senate and the Committee
19 on Ways and Means of the House of Representatives.

20 **SEC. 204. COMMERCIAL CUSTOMS OPERATIONS ADVISORY**
21 **COMMITTEE.**

22 (a) ESTABLISHMENT.—Not later than June 30,
23 2010, the Secretary of the Treasury and the Secretary of
24 Homeland Security shall jointly establish a Commercial

1 Customs Operations Advisory Committee (in this section
2 referred to as the “Advisory Committee”).

3 (b) MEMBERSHIP.—

4 (1) IN GENERAL.—The Advisory Committee
5 shall be comprised of—

6 (A) 20 individuals appointed under para-
7 graph (2);

8 (B) the Assistant Secretary for Tax Policy
9 of the Department of the Treasury and the As-
10 sistant Secretary of Policy and Planning of the
11 Department of Homeland Security, who shall
12 jointly co-chair meetings of the Advisory Com-
13 mittee; and

14 (C) the Commissioner of U.S. Customs
15 and Border Protection and the Director of U.S.
16 Immigration and Customs Enforcement, who
17 shall serve as deputy co-chairs of meetings of
18 the Advisory Committee.

19 (2) APPOINTMENT.—Not later than June 30,
20 2010, the Secretary of the Treasury and the Sec-
21 retary of Homeland Security shall jointly appoint 20
22 individuals from the private sector to the Advisory
23 Committee, not more than 10 of whom shall be of
24 the same political party. Each individual shall be ap-
25 pointed to the Advisory Committee for a term of up

1 to 4 years, and may be reappointed to subsequent
2 terms but may not serve more than 2 terms sequen-
3 tially.

4 (3) QUALIFICATIONS.—The individuals ap-
5 pointed to the Advisory Committee shall be broadly
6 representative of the sectors of the United States
7 economy affected by the commercial operations of
8 the U.S. Customs and Border Protection Agency
9 and the U.S. Immigration and Customs Enforce-
10 ment Agency.

11 (4) TRANSFER OF MEMBERSHIP.—The Sec-
12 retary of the Treasury and the Secretary of Home-
13 land Security may transfer members serving on the
14 Advisory Committee on Commercial Operations of
15 the United States Customs Service established under
16 section 9503(c) of the Omnibus Budget Reconcili-
17 ation Act of 1987 (19 U.S.C. 2071 note) on the day
18 before the date of the enactment of this Act to the
19 Advisory Committee established under subsection
20 (a).

21 (c) DUTIES.—The Advisory Committee established
22 under subsection (a) shall—

23 (1) advise the Secretary of the Treasury and
24 the Secretary of Homeland Security on all matters
25 involving the commercial operations of the U.S. Cus-

1 toms and Border Protection Agency and the U.S.
2 Immigration and Customs Enforcement Agency, in-
3 cluding advising with respect to significant changes
4 that are proposed with respect to agency regulations,
5 policies, or practices;

6 (2) provide recommendations to the Secretary
7 of the Treasury and the Secretary of Homeland Se-
8 curity on improvements to the commercial operations
9 of the U.S. Customs and Border Protection Agency
10 and the U.S. Immigration and Customs Enforce-
11 ment Agency; and

12 (3) perform such other functions relating to the
13 commercial operations of the U.S. Customs and Bor-
14 der Protection Agency and the U.S. Immigration
15 and Customs Enforcement Agency as prescribed by
16 law or as the Secretary of the Treasury and the Sec-
17 retary of Homeland Security jointly direct.

18 (d) MEETINGS.—

19 (1) IN GENERAL.—The Advisory Committee
20 shall meet at the call of the Secretary of the Treas-
21 ury and the Secretary of Homeland Security or at
22 the call of not less than $\frac{2}{3}$ of the membership of the
23 Advisory Committee.

24 (2) NUMBER OF MEETINGS.—The Advisory
25 Committee shall, at a minimum, meet at least 4

1 times each calendar year. Additional meetings may
2 be called of such special task forces or other groups
3 made up of members of the Advisory Committee as
4 the Advisory Committee determines appropriate.

5 (3) ADDITION OF AGENDA ITEMS.—Any mem-
6 ber of the Advisory Committee may add an item to
7 the agenda of a meeting not less than 3 days before
8 the meeting.

9 (4) OPEN MEETINGS.—A meeting of the Advi-
10 sory Committee shall be open to the public unless
11 the Secretary of the Treasury and the Secretary of
12 Homeland Security determine that the meeting will
13 include matters the disclosure of which would seri-
14 ously compromise the development of policies, prior-
15 ities, or negotiating objectives or positions that could
16 impact the commercial operations of the U.S. Cus-
17 toms and Border Protection Agency or the U.S. Im-
18 migration and Customs Enforcement Agency.

19 (e) REPORTS.—

20 (1) ANNUAL REPORT.—Not later than Decem-
21 ber 31 of each calendar year, the Advisory Com-
22 mittee shall submit to the Committee on Finance of
23 the Senate and the Committee on Ways and Means
24 of the House of Representatives a report that—

1 (A) describes the activities of the Advisory
2 Committee during the preceding fiscal year; and

3 (B) sets forth any recommendations of the
4 Advisory Committee regarding the commercial
5 operations of the U.S. Customs and Border
6 Protection Agency and the U.S. Immigration
7 and Customs Enforcement Agency during the
8 preceding fiscal year.

9 (2) ADDITIONAL REPORTS.—The Advisory
10 Committee may submit directly to the Committee on
11 Finance of the Senate and the Committee on Ways
12 and Means of the House of Representatives such ad-
13 ditional reports on the commercial operations of the
14 U.S. Customs and Border Protection Agency and
15 the U.S. Immigration and Customs Enforcement
16 Agency as the Advisory Committee determines ap-
17 propriate.

18 (f) APPLICABILITY OF FEDERAL ADVISORY COM-
19 MITTEE ACT.—The provisions of the Federal Advisory
20 Committee Act (5 U.S.C. App.) shall apply to the Advisory
21 Committee, except as follows:

22 (1) Subsections (a) and (b) of section 10 of
23 such Act (relating to open meetings and availability
24 of information) shall not apply.

1 (2) Section 11 of such Act (relating to the
2 availability of transcripts of meetings) shall not
3 apply.

4 (3) Section 14(a)(2) of such Act (relating to
5 termination) shall be applied by substituting “4-year
6 period” for “two-year period”.

7 (g) CONFORMING AMENDMENT.—

8 (1) IN GENERAL.—Effective June 30, 2010,
9 section 9503(c) of the Omnibus Budget Reconcili-
10 ation Act of 1987 (19 U.S.C. 2071 note) is repealed.

11 (2) REFERENCE.—Any reference in law to the
12 Advisory Committee on Commercial Operations of
13 the United States Customs Service established under
14 section 9503(c) of the Omnibus Budget Reconcili-
15 ation Act of 1987 (19 U.S.C. 2071 note) made on
16 or after June 30, 2010, shall be deemed a reference
17 to the Commercial Customs Operations Advisory
18 Committee established under subsection (a).

19 **SEC. 205. AUTOMATED COMMERCIAL ENVIRONMENT COM-**
20 **PUTER SYSTEM.**

21 (a) FUNDING.—Section 13031(f)(5) of the Consoli-
22 dated Omnibus Budget Reconciliation Act of 1985 (19
23 U.S.C. 58c(f)(5)) is amended—

24 (1) in subparagraph (A)—

1 (A) by striking “2003, 2004, and 2005”
 2 and inserting “2010, 2011, and 2012”; and

3 (B) by striking “\$350,000,000” and in-
 4 serting “\$325,000,000”; and

5 (2) in subparagraph (B)—

6 (A) by striking “2003 through 2005” and
 7 inserting “2010 through 2012”; and

8 (B) by striking “for the development” and
 9 inserting “to complete the development”.

10 (b) REPORT.—Section 311(b)(3) of the Customs Bor-
 11 der Security Act of 2002 (19 U.S.C. 2075 note) is amend-
 12 ed to read as follows:

13 “(3) REPORT.—

14 “(A) IN GENERAL.—Not later than De-
 15 cember 31, 2009, the Commissioner of U.S.
 16 Customs and Border Protection shall submit to
 17 the Committee on Appropriations and the Com-
 18 mittee on Finance of the Senate and the Com-
 19 mittee on Appropriations and the Committee on
 20 Ways and Means of the House of Representa-
 21 tives a report specifying—

22 “(i) the plans of the U.S. Customs
 23 and Border Protection Agency and dead-
 24 lines for incorporating all cargo release
 25 data elements into the Automated Com-

1 mercial Environment computer system not
2 later than September 30, 2012, to conform
3 with the admissibility criteria of agencies
4 participating in the International Trade
5 Data System identified pursuant to section
6 411(d)(4)(A)(iii) of the Tariff Act of 1930;

7 “(ii) the Agency’s remaining priorities
8 for incorporating entry summary data ele-
9 ments, cargo manifest data elements, and
10 cargo financial data elements into the
11 Automated Commercial Environment com-
12 puter system; and

13 “(iii) the Agency’s objectives, plans,
14 and deadlines for implementing the prior-
15 ities identified under clause (ii) not later
16 than September 30, 2012.

17 “(B) UPDATE OF REPORTS.—Not later
18 than December 31, 2010, and September 30,
19 2011, the Commissioner shall submit to the
20 Committee on Appropriations and the Com-
21 mittee on Finance of the Senate and the Com-
22 mittee on Appropriations and the Committee on
23 Ways and Means of the House of Representa-
24 tives an updated report addressing each of the
25 matters referred to in subparagraph (A).”.

1 (c) GOVERNMENT ACCOUNTABILITY OFFICE RE-
 2 PORT.—Not later than December 31, 2012, the Comp-
 3 troller General of the United States shall submit to the
 4 Committee on Appropriations and the Committee on Fi-
 5 nance of the Senate and the Committee on Appropriations
 6 and the Committee on Ways and Means of the House of
 7 Representatives a report—

8 (1) evaluating the cost and effectiveness of the
 9 efforts of the U.S. Customs and Border Protection
 10 Agency to complete the development, establishment,
 11 and implementation of the Automated Commercial
 12 Environment computer system; and

13 (2) assessing the extent to which any additional
 14 functionality may be added into the Automated
 15 Commercial Environment computer system at a rea-
 16 sonable cost.

17 **SEC. 206. INTERNATIONAL TRADE DATA SYSTEM.**

18 (a) INFORMATION TECHNOLOGY INFRASTRUC-
 19 TURE.—Section 411(d) of the Tariff Act of 1930 (19
 20 U.S.C. 1411(d)) is amended—

21 (1) by redesignating paragraphs (4) through
 22 (7) as paragraphs (5) through (8), respectively;

23 (2) by inserting after paragraph (3) the fol-
 24 lowing:

1 “(4) INFORMATION TECHNOLOGY INFRASTRUC-
2 TURE.—

3 “(A) IN GENERAL.—The Secretary shall
4 work with the head of each agency participating
5 in the ITDS and the Interagency Steering
6 Committee to ensure that each such agency—

7 “(i) develops and maintains the nec-
8 essary information technology infrastruc-
9 ture to support the operation of the ITDS;

10 “(ii) enters into a memorandum of
11 understanding, or takes such other action
12 as is necessary, to provide for the informa-
13 tion sharing between the agency and the
14 U.S. Customs and Border Protection
15 Agency necessary for the operation and
16 maintenance of the ITDS; and

17 “(iii) not later than November 30,
18 2009, identifies and transmits to the Com-
19 missioner of U.S. Customs and Border
20 Protection the admissibility criteria and
21 data elements required by the agency to
22 authorize the release of cargo by the U.S.
23 Customs and Border Protection Agency for
24 incorporation into the operational

1 functionality of the Automated Commercial
 2 Environment computer system.”; and

3 (3) in paragraph (5), as redesignated, by strik-
 4 ing “each fiscal year” and inserting “each of the fis-
 5 cal years 2010 through 2013”.

6 (b) AUTHORIZATION OF APPROPRIATIONS.—Section
 7 13031(f)(5) of the Consolidated Omnibus Budget Rec-
 8 onciliation Act of 1985 (19 U.S.C. 58c(f)(5)), as amended
 9 by section 205(a), is further amended by striking subpara-
 10 graph (C) and inserting the following:

11 “(C) Of the amounts deposited in the account estab-
 12 lished under subparagraph (A), there shall be available to
 13 the Secretary of the Treasury \$25,000,000 for each of the
 14 fiscal years 2010, 2011, and 2012, to remain available
 15 until expended, to carry out the provisions of section
 16 411(d)(4)(A) of the Tariff Act of 1930.”.

17 **SEC. 207. ELECTRONIC SUBMISSION OF PUBLIC COM-**
 18 **MENTS.**

19 Not later than December 31, 2009, the Commissioner
 20 of U.S. Customs and Border Protection shall provide—

21 (1) for the electronic submission and posting of
 22 any public comments solicited by the U.S. Customs
 23 and Border Protection Agency on the Internet
 24 website of the Agency; and

(2) for the prompt posting of public comments associated with any rulemaking of the Agency on the Federal Government Internet website for Federal regulations, www.regulations.gov, or any successor website.

Subtitle B—Trade Enforcement

CHAPTER 1—COMMERCIAL RISK

ASSESSMENT TARGETING

SEC. 211. COMMERCIAL TARGETING DIVISION AND NATIONAL TARGETING AND ANALYSIS GROUPS.

(a) ESTABLISHMENT OF COMMERCIAL TARGETING DIVISION.—

(1) IN GENERAL.—The Secretary of Homeland Security shall establish and maintain within the Office of Trade of the U.S. Customs and Border Protection Agency, established under section 4 of the Act of March 3, 1927, as added by section 102, a Commercial Targeting Division.

(2) COMPOSITION.—The Commercial Targeting Division shall be composed of—

(A) headquarters personnel led by an Executive Director, who shall report to the Assistant Commissioner of the Office of Trade; and

(B) individual National Targeting and Analysis Groups, each led by a Director who

1 shall report to the Executive Director of the
2 Commercial Targeting Division.

3 (3) DUTIES.—The Commercial Targeting Divi-
4 sion shall be dedicated—

5 (A) to the development and conduct of
6 commercial risk assessment targeting with re-
7 spect to cargo destined for the United States in
8 accordance with subsection (c); and

9 (B) to issuing Trade Alerts described in
10 subsection (d).

11 (b) NATIONAL TARGETING AND ANALYSIS
12 GROUPS.—

13 (1) IN GENERAL.—The Commissioner of U.S.
14 Customs and Border Protection shall determine the
15 priorities of the National Targeting and Analysis
16 Groups referred to in subsection (a)(2)(B), to in-
17 clude the enforcement, with respect to the importa-
18 tion of merchandise into the United States, of—

19 (A) intellectual property rights;

20 (B) health and safety laws and regulations;

21 (C) agriculture-related laws and regula-
22 tions;

23 (D) textile- and apparel-related laws and
24 regulations;

1 (E) general revenue laws and regulations;
 2 and

3 (F) non-general revenue laws and regula-
 4 tions, including with respect to antidumping
 5 and countervailing duties.

6 (c) COMMERCIAL RISK ASSESSMENT TARGETING.—
 7 In carrying out its duties with respect to commercial risk
 8 assessment targeting, the Commercial Targeting Division
 9 shall—

10 (1) establish targeted risk assessment meth-
 11 odologies and standards—

12 (A) for evaluating the risk that cargo des-
 13 tined for the United States may violate the cus-
 14 toms and trade laws of the United States; and

15 (B) for issuing, as appropriate, Trade
 16 Alerts described in subsection (d); and

17 (2) to the extent practicable and otherwise au-
 18 thorized by law, use information available from the
 19 Automated Commercial System, the Automated
 20 Commercial Environment computer system, the
 21 Automated Targeting System, the Automated Entry
 22 System, the International Trade Data System, and
 23 the Treasury Enforcement Communications System,
 24 and any successor systems, to administer the meth-

1 odologies and standards established under paragraph
2 (1).

3 (d) TRADE ALERTS.—

4 (1) ISSUANCE.—Based upon the application of
5 the targeted risk assessment methodologies and
6 standards established under subsection (c), the Ex-
7 ecutive Director of the Commercial Targeting Divi-
8 sion and the Directors of the National Targeting
9 and Analysis Groups may issue Trade Alerts to di-
10 rectors of United States ports of entry directing fur-
11 ther inspection, or physical examination or testing,
12 of specific merchandise to ensure compliance with all
13 applicable customs and trade laws and regulations
14 administered by the U.S. Customs and Border Pro-
15 tection Agency.

16 (2) DETERMINATIONS NOT TO IMPLEMENT
17 TRADE ALERTS.—The director of a United States
18 port of entry may determine not to conduct further
19 inspections, or physical examination or testing, pur-
20 suant to a Trade Alert issued under paragraph (1)
21 if—

22 (A) the director finds that such a deter-
23 mination is justified by port security interests;
24 and

1 (B) notifies the Deputy Assistant Commis-
2 sioner of the Customs Facilitation and Trade
3 Enforcement Division of the Office of Field Op-
4 erations, established under section 5 of the Act
5 of March 3, 1927, as added by section 102, of
6 the determination and the reasons for the de-
7 termination not later than 48 hours after mak-
8 ing the determination.

9 (3) SUMMARY OF DETERMINATIONS NOT TO IM-
10 PLEMENT.—The Deputy Assistant Commissioner for
11 Customs Facilitation and Trade Enforcement
12 shall—

13 (A) compile an annual public summary of
14 all determinations by directors of United States
15 ports of entry under paragraph (2) and the rea-
16 sons for those determinations; and

17 (B) submit the summary to the Committee
18 on Finance of the Senate and the Committee on
19 Ways and Means of the House of Representa-
20 tives not later than December 31 of each year.

21 (4) INSPECTION DEFINED.—In this subsection,
22 the term “inspection” means the comprehensive
23 evaluation process used by the U.S. Customs and
24 Border Protection Agency, other than physical ex-
25 amination or testing, to permit the entry of mer-

1 chandise into the United States, or the clearance of
 2 merchandise for transportation in bond through the
 3 United States, for purposes of—

4 (A) assessing duties;

5 (B) identifying restricted or prohibited
 6 items; and

7 (C) ensuring compliance with all applicable
 8 customs and trade laws and regulations admin-
 9 istered by the Agency.

10 (e) USE OF TRADE DATA FOR COMMERCIAL EN-
 11 FORCEMENT PURPOSES.—Section 343(a)(3) of the Trade
 12 Act of 2002 (19 U.S.C. 2071 note) is amended—

13 (1) by striking subparagraph (F); and

14 (2) by redesignating subparagraphs (G)
 15 through (L) as subparagraphs (F) through (K), re-
 16 spectively.

17 **SEC. 212. ANNUAL ILLEGAL DRUG CONTROL LAW EN-**
 18 **FORCEMENT STRATEGY.**

19 (a) IN GENERAL.—Section 123 of the Customs and
 20 Trade Act of 1990 (19 U.S.C. 2083) is amended to read
 21 as follows:

22 **“SEC. 123. ANNUAL ILLEGAL DRUG CONTROL LAW EN-**
 23 **FORCEMENT STRATEGY.**

24 “(a) REPORTS ON VIOLATION ESTIMATES.—Not
 25 later than June 30, 2010, and annually thereafter, the

1 Commissioner of U.S. Customs and Border Protection and
 2 the Director of U.S. Immigration and Customs Enforce-
 3 ment shall jointly develop and submit to the chairperson
 4 and ranking member of the Committee on Finance of the
 5 Senate and of the Committee on Ways and Means of the
 6 House of Representatives (in this section referred to as
 7 the ‘Committees’) in accordance with subsection (d) a re-
 8 port that contains an estimate of—

9 “(1) the number and extent of violations of the
 10 illegal drug control laws specified in subsection (b)
 11 that are likely to occur during the year following the
 12 report; and

13 “(2) the relative incidence of the violations de-
 14 scribed in paragraph (1) among the various United
 15 States ports of entry and customs regions within the
 16 customs territory of the United States during the
 17 year preceding the report.

18 “(b) ILLEGAL DRUG CONTROL LAWS SPECIFIED.—
 19 The Commissioner of U.S. Customs and Border Protec-
 20 tion and the Director of U.S. Immigration and Customs
 21 Enforcement, after consultation with the Committees—

22 “(1) shall, not later than December 31, 2009,
 23 prepare a list of those provisions of the illegal drug
 24 control laws of the United States with respect to
 25 which the U.S. Customs and Border Protection

1 Agency and the U.S. Immigration and Customs En-
2 forcement Agency have enforcement responsibility
3 and to which the reports required by subsection (a)
4 will apply; and

5 “(2) may periodically update the list developed
6 under paragraph (1), as warranted.

7 “(c) ENFORCEMENT STRATEGY.—Not later than 90
8 days after submitting a report under subsection (a), the
9 Commissioner of U.S. Customs and Border Protection and
10 the Director of U.S. Immigration and Customs Enforce-
11 ment shall jointly—

12 “(1) develop or update a strategy for enforcing
13 the illegal drug control laws specified in subsection
14 (b) in a nationally uniform manner and addressing
15 the violations estimated in the report during the pe-
16 riod covered by the report; and

17 “(2) submit to the chairperson and ranking
18 member of each of the Committees a confidential re-
19 port setting forth the details of the strategy de-
20 scribed in paragraph (1).

21 “(d) CONFIDENTIALITY.—The contents of any report
22 submitted to the chairperson and ranking member of each
23 of the Committees under subsection (a) or (c) are con-
24 fidential and the disclosure of the contents is restricted
25 to—

1 “(1) officers and employees of the United
 2 States designated by the Commissioner of U.S. Cus-
 3 toms and Border Protection or the Director of U.S.
 4 Customs and Immigration Enforcement to have ac-
 5 cess to the contents of the report;

6 “(2) the chairperson and ranking member of
 7 each of the Committees; and

8 “(3) such Members of Congress and staff of
 9 such Members as the chairperson or ranking mem-
 10 ber of either of the Committees may authorize to
 11 have access to the contents of the report.”.

12 (b) CONFORMING AMENDMENT.—The table of con-
 13 tents for the Customs and Trade Act of 1990 is amended
 14 by striking the item relating to section 123 and inserting
 15 the following:

“Sec. 123. Annual illegal drug control law enforcement strategy.”.

16 **SEC. 213. REPORT ON OVERSIGHT OF REVENUE PROTEC-**
 17 **TION AND ENFORCEMENT MEASURES BY THE**
 18 **INSPECTOR GENERAL.**

19 The Inspector General of the Department of Home-
 20 land Security shall submit to the Committee on Finance
 21 of the Senate and the Committee on Ways and Means of
 22 the House of Representatives a report assessing the fol-
 23 lowing:

1 (1) The effectiveness of the measures taken by
2 the U.S. Customs and Border Protection Agency
3 with respect to revenue protection, including—

4 (A) the collection of countervailing and
5 antidumping duties;

6 (B) the assessment and collection of com-
7 mercial fines and penalties; and

8 (C) the adequacy of the policies of the
9 Agency with respect to monitoring and tracking
10 of merchandise transported in bond and col-
11 lecting duties, as appropriate.

12 (2) The effectiveness of actions taken by the
13 U.S. Customs and Border Protection Agency to
14 measure accountability and performance with re-
15 spect to revenue protection.

16 (3) The number and outcome of investigations
17 instituted by the U.S. Customs and Border Protec-
18 tion Agency with respect to the underpayment of du-
19 ties.

20 (4) The adequacy of training with respect to
21 the collection of duties provided for personnel of the
22 U.S. Customs and Border Protection Agency.

1 **SEC. 214. REPORT ON SECURITY AND REVENUE MEASURES**
2 **WITH RESPECT TO MERCHANDISE TRANS-**
3 **PORTED IN BOND.**

4 (a) IN GENERAL.—Not later than December 31 of
5 2009, 2011, and 2013, the Secretary of Homeland Secu-
6 rity and the Secretary of the Treasury shall jointly submit
7 to the Committee on Finance of the Senate and the Com-
8 mittee on Ways and Means of the House of Representa-
9 tives a report on efforts undertaken by the U.S. Customs
10 and Border Protection Agency to ensure the secure trans-
11 portation of merchandise in bond through the United
12 States and the collection of revenue owed upon the entry
13 of such merchandise into the United States for consump-
14 tion.

15 (b) CONTENTS.—The report required by subsection
16 (a) shall include information, for the 2 fiscal years pre-
17 ceding the submission of the report, on—

18 (1) the overall number of entries of merchan-
19 dise for transportation in bond through the United
20 States;

21 (2) the ports at which merchandise arrives in
22 the United States for transportation in bond and at
23 which records of the arrival of such merchandise are
24 generated;

25 (3) the average time taken to reconcile such
26 records with the records at the final destination of

1 the merchandise in the United States to demonstrate
2 that the merchandise reaches its final destination or
3 is reexported;

4 (4) the average time taken to transport mer-
5 chandise in bond from the port at which the mer-
6 chandise arrives in the United States to its final des-
7 tination in the United States;

8 (5) the total amount of duties, taxes, and fees
9 owed with respect to shipments of merchandise
10 transported in bond and the total amount of such
11 duties, taxes, and fees paid;

12 (6) the total number of notifications by carriers
13 of merchandise being transported in bond that the
14 destination of the merchandise has changed; and

15 (7) the number of entries that remain
16 unreconciled.

17 **SEC. 215. IMPORTER OF RECORD PROGRAM.**

18 (a) ESTABLISHMENT.—Not later than 180 days after
19 the date of the enactment of this Act, the Secretary of
20 Homeland Security shall establish an importer of record
21 program to assign and maintain importer of record num-
22 bers.

23 (b) REQUIREMENTS.—The Secretary of Homeland
24 Security shall ensure that, as part of the importer of

1 record program, the U.S. Customs and Border Protection
2 Agency—

3 (1) develops criteria that importers must meet
4 in order to obtain an importer of record number;

5 (2) provides a process by which importers are
6 assigned importer of record numbers;

7 (3) maintains a centralized database of im-
8 porter of record numbers, including a history of im-
9 porter of record numbers associated with each im-
10 porter;

11 (4) evaluates the accuracy of the database; and

12 (5) takes measures to ensure that duplicate im-
13 porter of record numbers are not issued.

14 (c) REPORT.—Not later than 1 year after the date
15 of the enactment of this Act, the Secretary of Homeland
16 Security shall submit to the Committee on Finance of the
17 Senate and the Committee on Ways and Means of the
18 House of Representatives a report on the importer of
19 record program established under subsection (a).

20 (d) NUMBER DEFINED.—In this subsection, the term
21 “number”, with respect to an importer of record, means
22 a filing identification number described in section 24.5 of
23 title 19, Code of Federal Regulations (as in effect on the
24 day before the date of the enactment of this Act).

1 **CHAPTER 2—IMPORT HEALTH AND**
2 **SAFETY**

3 **SEC. 221. INTERAGENCY IMPORT SAFETY WORKING GROUP.**

4 (a) ESTABLISHMENT.—There is established an inter-
5 agency Import Safety Working Group.

6 (b) MEMBERSHIP.—The interagency Import Safety
7 Working Group shall consist of the following officials or
8 their designees:

9 (1) The Secretary of Homeland Security, who
10 shall serve as the Chair.

11 (2) The Secretary of Health and Human Serv-
12 ices, who shall serve as the Vice Chair.

13 (3) The Secretary of the Treasury.

14 (4) The Secretary of Agriculture.

15 (5) The United States Trade Representative.

16 (6) The Director of the Office of Management
17 and Budget.

18 (7) The Commissioner of the Food and Drug
19 Administration.

20 (8) The Commissioner of U.S. Customs and
21 Border Protection.

22 (9) The Chairman of the Consumer Product
23 Safety Commission.

24 (10) The head of any other Federal department
25 or agency designated by the President to participate

1 in the interagency Import Safety Working Group, as
2 appropriate.

3 (c) DUTIES.—The duties of the interagency Import
4 Safety Working Group shall include—

5 (1) consulting on the development of the Joint
6 Import Safety Rapid Response Plan required by sec-
7 tion 222;

8 (2) periodically evaluating the adequacy of the
9 plans, practices, and resources of the Federal Gov-
10 ernment dedicated to ensuring the safety of imports
11 into the United States, including—

12 (A) reviewing the engagement and coopera-
13 tion of foreign governments and foreign manu-
14 facturers in facilitating the inspection and cer-
15 tification, as appropriate, of such imports and
16 the facilities producing such imports to ensure
17 the safety of such imports into the United
18 States; and

19 (B) recommending additional administra-
20 tive measures designed to ensure the safety of
21 imports, as appropriate;

22 (3) identifying best practices to assist United
23 States importers in taking all appropriate steps to
24 ensure the safety of imports into the United States,
25 including with respect to—

1 (A) the inspection of manufacturing facili-
2 ties in foreign countries;

3 (B) the inspection of imports destined for
4 the United States before exportation from a
5 foreign country or before distribution in the
6 United States; and

7 (C) the protection of the international sup-
8 ply chain (as defined in section 2 of the Secu-
9 rity and Accountability For Every Port Act of
10 2006 (6 U.S.C. 901));

11 (4) identifying best practices to assist Federal,
12 State, and local governments and agencies, and port
13 authorities, to improve communication and coordina-
14 tion among such agencies and authorities in re-
15 sponding to any threats to public health and safety
16 associated with specific imports into the United
17 States; and

18 (5) otherwise identifying appropriate steps to
19 increase the accountability of United States import-
20 ers and the engagement of foreign government agen-
21 cies with respect to ensuring the safety of imports
22 into the United States.

23 **SEC. 222. JOINT IMPORT SAFETY RAPID RESPONSE PLAN.**

24 (a) IN GENERAL.—Not later than December 31,
25 2009, the Secretary of Homeland Security, in consultation

1 with the interagency Import Safety Working Group, shall
2 develop a plan (to be known as the “Joint Import Safety
3 Rapid Response Plan”) that sets forth protocols and de-
4 fines practices for the U.S. Customs and Border Protec-
5 tion Agency to use—

6 (1) in taking action in response to, and coordi-
7 nating Federal responses to, an incident in which
8 cargo destined for or merchandise entering the
9 United States has been identified as posing a threat
10 to the health or safety of consumers in the United
11 States; and

12 (2) in recovering from or mitigating the effects
13 of actions and responses to an incident described in
14 paragraph (1).

15 (b) CONTENTS.—The Joint Import Safety Rapid Re-
16 sponse Plan shall address—

17 (1) the statutory and regulatory authorities and
18 responsibilities of the U.S. Customs and Border Pro-
19 tection Agency and other Federal departments and
20 agencies in responding to an incident described in
21 subsection (a)(1);

22 (2) the protocols and practices to be used by
23 the U.S. Customs and Border Protection Agency
24 when taking action in response to, and coordinating

1 Federal responses to, an incident described in sub-
2 section (a)(1);

3 (3) the measures to be taken by the U.S. Cus-
4 toms and Border Protection Agency and other Fed-
5 eral departments and agencies in recovering from or
6 mitigating the effects of actions taken in response to
7 an incident described in subsection (a)(1) after the
8 incident; and

9 (4) exercises that the U.S. Customs and Border
10 Protection Agency may conduct in conjunction with
11 Federal, State, and local departments and agencies
12 to simulate responses to an incident described in
13 subsection (a)(1).

14 (c) UPDATES OF PLAN.—The Secretary of Homeland
15 Security shall review and update the Joint Import Safety
16 Rapid Response Plan, as appropriate, after conducting ex-
17 ercises under subsection (d).

18 (d) IMPORT HEALTH AND SAFETY EXERCISES.—

19 (1) IN GENERAL.—The Secretary of Homeland
20 Security and the Commissioner of U.S. Customs and
21 Border Protection shall periodically engage in the
22 exercises referred to in subsection (b)(4), in conjunc-
23 tion with Federal, State, and local departments and
24 agencies, as appropriate, to test and evaluate the
25 protocols and practices identified in the Joint Im-

1 port Safety Rapid Response Plan at United States
2 ports of entry.

3 (2) REQUIREMENTS FOR EXERCISES.—In con-
4 ducting exercises under paragraph (1), the Secretary
5 and the Commissioner shall—

6 (A) make allowance for the resources,
7 needs, and constraints of United States ports of
8 entry of different sizes in representative geo-
9 graphic locations across the United States;

10 (B) base evaluations on current risk as-
11 sessments of merchandise entering the United
12 States at representative United States ports of
13 entry located across the United States; and

14 (C) ensure that such exercises are con-
15 ducted in a manner consistent with the Na-
16 tional Incident Management System, the Na-
17 tional Response Plan, the National Infrastruc-
18 ture Protection Plan, the National Prepared-
19 ness Guidance, the Maritime Transportation
20 System Security Plan, and other such national
21 initiatives of the Department of Homeland Se-
22 curity, as appropriate.

23 (3) REQUIREMENTS FOR TESTING AND EVALUA-
24 TION.—The Secretary and the Commissioner shall

1 ensure that the testing and evaluation carried out in
2 conducting exercises under paragraph (1)—

3 (A) are performed using clear and objec-
4 tive performance measures; and

5 (B) result in the identification of specific
6 recommendations or best practices for respond-
7 ing to an incident described in subsection
8 (a)(1).

9 (4) DISSEMINATION OF RECOMMENDATIONS
10 AND BEST PRACTICES.—The Secretary and the
11 Commissioner shall—

12 (A) share the recommendations or best
13 practices identified under paragraph (3) among
14 the members of the interagency Import Safety
15 Working Group and with, as appropriate—

16 (i) State and local governments;

17 (ii) tribal and foreign governments;

18 and

19 (iii) private sector entities (as defined
20 in section 2); and

21 (B) use such recommendations and best
22 practices to update the Joint Import Safety
23 Rapid Response Plan.

1 **SEC. 223. TRAINING.**

2 The Commissioner of U.S. Customs and Border Pro-
3 tection shall ensure that personnel of the U.S. Customs
4 and Border Protection Agency assigned to ports of entry
5 are trained to effectively administer the provisions of this
6 chapter and to otherwise assist in ensuring the safety of
7 imports into the United States.

8 **CHAPTER 3—IMPORT-RELATED PROTEC-**
9 **TION OF INTELLECTUAL PROPERTY**
10 **RIGHTS**

11 **SEC. 231. INTELLECTUAL PROPERTY RIGHTS.**

12 In this chapter (other than section 232), the term
13 “intellectual property rights” refers to copyrights, trade-
14 marks, and other forms of intellectual property rights that
15 are enforced by the U.S. Customs and Border Protection
16 Agency.

17 **SEC. 232. NATIONAL INTELLECTUAL PROPERTY RIGHTS**
18 **COORDINATION CENTER.**

19 (a) **ESTABLISHMENT.**—The Secretary of Homeland
20 Security shall—

21 (1) establish within the U.S. Immigration and
22 Customs Enforcement Agency a National Intellec-
23 tual Property Rights Coordination Center; and

24 (2) appoint an Assistant Director to head the
25 National Intellectual Property Rights Coordination
26 Center.

1 (b) DUTIES.—The duties of the Assistant Director of
2 the National Intellectual Property Rights Coordination
3 Center shall include—

4 (1) coordinating the investigation of sources of
5 goods imported into the United States that infringe
6 intellectual property rights to identify organizations
7 that produce, smuggle, or distribute such goods;

8 (2) coordinating training for domestic and
9 international law enforcement agencies on investiga-
10 tive best practices to develop and expand the capa-
11 bility of such agencies to enforce intellectual prop-
12 erty rights;

13 (3) coordinating activities conducted by the
14 United States to prevent the importation or expor-
15 tation of goods that infringe intellectual property
16 rights;

17 (4) supporting the interdiction of goods des-
18 tined for the United States that infringe intellectual
19 property rights;

20 (5) collecting information regarding infringe-
21 ments of intellectual property rights from non-Fed-
22 eral sources;

23 (6) integrating information from domestic and
24 international law enforcement agencies with informa-

1 tion received from non-Federal sources regarding in-
2 fringements of intellectual property rights; and

3 (7) disseminating information regarding in-
4 fringements of intellectual property rights to other
5 Federal agencies for use in appropriate investigative
6 and tactical activities.

7 (c) COORDINATION WITH OTHER AGENCIES.—In
8 carrying out the duties described in subsection (b), the As-
9 sistant Director of the National Intellectual Property
10 Rights Coordination Center shall coordinate with—

11 (1) the U.S. Customs and Border Protection
12 Agency;

13 (2) the Food and Drug Administration;

14 (3) the Department of Justice;

15 (4) the Department of Commerce;

16 (5) the United States Postal Inspection Service;

17 (6) any Federal, State, local, or international
18 law enforcement agencies the Director of U.S. Immi-
19 gration and Customs Enforcement considers appro-
20 priate; and

21 (7) any other entities the Director of U.S. Im-
22 migration and Customs Enforcement considers ap-
23 propriate.

1 **SEC. 233. JOINT STRATEGIC PLAN FOR THE ENFORCEMENT**
2 **OF INTELLECTUAL PROPERTY RIGHTS.**

3 The Commissioner of U.S. Customs and Border Pro-
4 tection and the Director of U.S. Immigration and Customs
5 Enforcement shall include in the Joint Strategic Plan (as
6 defined in section 2)—

7 (1) a description of the efforts of the Depart-
8 ment of Homeland Security to enforce intellectual
9 property rights;

10 (2) a list of the 10 United States ports of entry
11 where the U.S. Customs and Border Protection
12 Agency has seized the most goods, by volume, that
13 infringe intellectual property rights during the most
14 recent 2-year period for which data are available;
15 and

16 (3) a recommendation for the optimal allocation
17 of personnel, resources, and technology to ensure
18 that the U.S. Customs and Border Protection Agen-
19 cy and the U.S. Immigration and Customs Enforce-
20 ment Agency are adequately enforcing intellectual
21 property rights.

22 **SEC. 234. REPEATED IMPORT-RELATED INFRINGEMENT OF**
23 **INTELLECTUAL PROPERTY RIGHTS.**

24 (a) IN GENERAL.—The Assistant Commissioner of
25 the Office of Trade of the U.S. Customs and Border Pro-
26 tection Agency shall identify and maintain a confidential

1 list of persons described in subsection (b) that have a his-
 2 tory of attempting to import goods that infringe intellec-
 3 tual property rights into the United States.

4 (b) PERSONS DESCRIBED.—Persons described in this
 5 subsection are persons involved in the entry of goods into
 6 the United States, including intermodal transportation
 7 system providers, contract logistics providers, air, land,
 8 and sea carriers, customs brokers, importers, and for-
 9 warders.

10 (c) COMMERCIAL RISK ASSESSMENT TARGETING.—
 11 The Commercial Targeting Division of the Office of Trade
 12 established under section 211 shall consider the list under
 13 subsection (a) when establishing targeted risk assessment
 14 methodologies and standards under section 211(c).

15 (d) REMOVAL FROM LIST.—The Assistant Commis-
 16 sioner of the Office of Trade shall—

17 (1) periodically review the list of persons under
 18 subsection (a); and

19 (2) remove persons from the list that have dem-
 20 onstrated a pattern of compliance with intellectual
 21 property rights.

22 **SEC. 235. PERSONNEL DEDICATED TO THE ENFORCEMENT**
 23 **OF INTELLECTUAL PROPERTY RIGHTS.**

24 (a) IN GENERAL.—The Commissioner of U.S. Cus-
 25 toms and Border Protection shall ensure that sufficient

1 personnel are assigned throughout the U.S. Customs and
2 Border Protection Agency who have responsibility for pre-
3 venting the importation of goods that infringe intellectual
4 property rights into the United States, including the Com-
5 mercial Targeting Division established under section 211
6 and the Office of Rulings and Regulations of the Office
7 of Trade.

8 (b) PORT PERSONNEL.—The Commissioner of U.S.
9 Customs and Border Protection shall ensure that at least
10 1 full-time employee with principal responsibility for pre-
11 venting the importation into the United States of goods
12 that infringe intellectual property rights is assigned to
13 each United States port of entry on the list required by
14 section 233(2).

15 (c) STAFFING.—The Commissioner of U.S. Customs
16 and Border Protection shall assign not fewer than 3 full-
17 time employees of the U.S. Customs and Border Protec-
18 tion Agency to the National Intellectual Property Rights
19 Coordination Center established under section 232.

20 (d) REPORT.—Not later than December 31, 2010,
21 the Commissioner of U.S. Customs and Border Protection
22 shall submit to the Committee on Finance of the Senate
23 and the Committee on Ways and Means of the House of
24 Representatives a report estimating the average time re-
25 quired by the Office of Rulings and Regulations of the

1 Office of Trade to make a determination with respect to
2 whether goods detained by the U.S. Customs and Border
3 Protection Agency infringe intellectual property rights,
4 distinguishing among types of intellectual property rights.

5 **SEC. 236. TRAINING WITH RESPECT TO THE ENFORCEMENT**
6 **OF INTELLECTUAL PROPERTY RIGHTS.**

7 (a) TRAINING.—The Commissioner of U.S. Customs
8 and Border Protection shall ensure that officers of the
9 U.S. Customs and Border Protection Agency are trained
10 to effectively detect and identify goods destined for the
11 United States that infringe intellectual property rights, in-
12 cluding through the use of technologies identified under
13 subsection (b).

14 (b) IDENTIFICATION OF NEW TECHNOLOGIES.—In
15 consultation with private sector entities (as defined in sec-
16 tion 2), the Commissioner of U.S. Customs and Border
17 Protection shall identify—

18 (1) technologies with the cost-effective capa-
19 bility to detect and identify goods at United States
20 ports of entry that infringe intellectual property
21 rights; and

22 (2) cost-effective programs for training officers
23 of the U.S. Customs and Border Protection Agency
24 to use such technologies.

1 (c) DONATIONS OF TECHNOLOGY.—Not later than
 2 180 days after the date of the enactment of this Act, the
 3 Commissioner of U.S. Customs and Border Protection
 4 shall promulgate regulations to enable the U.S. Customs
 5 and Border Protection Agency to receive donations of
 6 hardware, software, equipment, and similar technologies,
 7 and to accept training and other support services from pri-
 8 vate sector entities.

9 **SEC. 237. RECORDATION OF WORKS FOR WHICH A COPY-**
 10 **RIGHT IS PENDING.**

11 (a) IN GENERAL.—Section 526 of the Tariff Act of
 12 1930 (19 U.S.C. 1526) is amended—

13 (1) by redesignating subsection (f) as sub-
 14 section (g); and

15 (2) by inserting after subsection (e) the fol-
 16 lowing:

17 “(f) RECORDATION OF WORKS FOR WHICH A COPY-
 18 RIGHT IS PENDING.—

19 “(1) IN GENERAL.—Subject to paragraph (3), a
 20 person who submits an application to the Copyright
 21 Office of the Library of Congress for registration of
 22 a copyright under title 17, United States Code, with
 23 respect to a work described in paragraph (2) may
 24 request the Commissioner of U.S. Customs and Bor-
 25 der Protection—

1 “(A) to record the application of the per-
2 son for registration of the copyright; and

3 “(B) to enforce the copyright for which the
4 person submitted the application to the same
5 extent and in the same manner as if the copy-
6 right was registered with the Copyright Office.

7 “(2) ELIGIBLE WORKS.—Works described in
8 this paragraph are recordings, motion pictures, or
9 similar works otherwise eligible for registration
10 under title 17, United States Code.

11 “(3) PROOF OF SUBSEQUENT REGISTRATION.—

12 “(A) IN GENERAL.—Not later than the
13 date that is 30 days after the date on which the
14 Copyright Office registers, or denies the reg-
15 istration of, the copyright of a person who re-
16 quested that the Commissioner record the appli-
17 cation for the copyright under paragraph (1),
18 the person shall submit to the Commissioner
19 proof of the registration of the copyright or a
20 notice of the denial of the registration of the
21 copyright, as the case may be.

22 “(B) NOTICES TO COMMISSIONER WHILE
23 APPLICATION PENDING.—Not later than 1 year
24 after the date on which a person requests that
25 the Commissioner record the application of the

1 person for a copyright under paragraph (1),
2 and annually thereafter until the Copyright Of-
3 fice registers the copyright or denies the appli-
4 cation for the copyright, the person shall submit
5 to the Commissioner a notice that the applica-
6 tion for the copyright remains pending before
7 the Copyright Office.

8 “(C) CANCELLATION OF RECORDATION.—
9 The Commissioner may cancel the recordation
10 of an application for a copyright under para-
11 graph (1) if—

12 “(i) the person who requested that the
13 Commissioner record the application for
14 the copyright—

15 “(I) fails to submit proof of the
16 registration of the copyright to the
17 Commissioner by the date required
18 under subparagraph (A); or

19 “(II) fails to submit a notice that
20 the application for the copyright re-
21 mains pending by a date required
22 under subparagraph (B); or

23 “(ii) the Commissioner receives notice
24 that the Copyright Office denied the appli-
25 cation for the copyright.”.

1 (b) CONFORMING AMENDMENT.—Subsection (g) of
 2 such section 526, as redesignated by subsection (a), is
 3 amended by striking “(e)” and inserting “(e) or (f)”.

4 **SEC. 238. AVAILABILITY OF SAMPLES TO OWNERS OF COPY-**
 5 **RIGHTS AND TRADEMARKS OR PERSONS IN-**
 6 **JURED BY THE IMPORTATION OF CIR-**
 7 **CUMVENTION DEVICES.**

8 (a) MERCHANDISE THAT MAY INFRINGE A COPY-
 9 RIGHT OR TRADEMARK.—The Commissioner of U.S. Cus-
 10 toms and Border Protection may provide a sample of mer-
 11 chandise detained or seized by the U.S. Customs and Bor-
 12 der Protection Agency because the merchandise may in-
 13 fringe a copyright or trademark to the owner of the copy-
 14 right or trademark (as the case may be) to conduct phys-
 15 ical examination or testing to determine if the merchan-
 16 dise infringes the copyright or trademark (as the case may
 17 be).

18 (b) CIRCUMVENTION DEVICES.—The Commissioner
 19 of U.S. Customs and Border Protection may provide a
 20 sample of merchandise detained or seized by the U.S. Cus-
 21 toms and Border Protection Agency because the importa-
 22 tion of the merchandise may be prohibited by subsection
 23 (a)(2) or (b)(1) of section 1201 of title 17, United States
 24 Code, to any person who may be injured by the importa-
 25 tion of the merchandise to conduct physical examination

1 or testing to determine if the importation of the merchan-
 2 dise is prohibited under either such subsection.

3 (c) BOND REQUIREMENT FOR MERCHANDISE OVER
 4 \$100.—If the value of a sample of merchandise described
 5 in subsection (a) or (b) is more than \$100, the Commis-
 6 sioner of U.S. Customs and Border Protection shall re-
 7 quire a person requesting such a sample to furnish a bond
 8 in the form and amount specified by the director of the
 9 United States port of entry where the merchandise entered
 10 the United States.

11 **SEC. 239. SEIZURE OF CIRCUMVENTION DEVICES.**

12 (a) IN GENERAL.—Section 596(c)(2) of the Tariff
 13 Act of 1930 (19 U.S.C. 1595a(c)(2)) is amended—

- 14 (1) in subparagraph (E), by striking “or”;
- 15 (2) in subparagraph (F), by striking the period
 16 and inserting “; or”; and
- 17 (3) by adding at the end the following:
 18 “(G) the U.S. Customs and Border Protec-
 19 tion Agency determines it is a technology, prod-
 20 uct, service, device, component, or part thereof
 21 the importation of which is prohibited under
 22 section 1201(a)(2) or 1201(b)(1) of title 17,
 23 United States Code.”.

24 (b) PUBLICATION.—Not later than 15 days after seiz-
 25 ing merchandise pursuant to section 596(c)(2)(G) of the

1 Tariff Act of 1930, as added by subsection (a), the Com-
2 missioner of U.S. Customs and Border Protection shall
3 publish on the Internet website of the U.S. Customs and
4 Border Protection Agency information regarding the mer-
5 chandise seized to permit any person to identify the mer-
6 chandise and determine whether the merchandise is—

7 (1) a technology, product, service, device, com-
8 ponent, or part thereof described in section
9 1201(a)(2) of title 17, United States Code, that—

10 (A) is primarily designed or produced for
11 the purpose of circumventing a technological
12 measure that effectively controls access to a
13 work for which the person has a copyright that
14 is registered under title 17, United States Code,
15 or that is otherwise recorded with the U.S. Cus-
16 toms and Border Protection Agency;

17 (B) has only limited commercially signifi-
18 cant purpose or use other than to circumvent
19 such a technological measure; or

20 (C) is marketed for use in circumventing
21 such a technological measure; or

22 (2) a technology, product, service, device, com-
23 ponent, or part thereof described in section
24 1201(b)(1) of title 17, United States Code, that—

1 (A) is primarily designed or produced for
2 the purpose of circumventing protection af-
3 farded by a technological measure that effec-
4 tively protects a right of the person for a work
5 or a portion of a work that is registered under
6 title 17, United States Code, or that is other-
7 wise recorded with the U.S. Customs and Bor-
8 der Protection Agency;

9 (B) has only limited commercially signifi-
10 cant purpose or use other than to circumvent
11 protection afforded by such a technological
12 measure; or

13 (C) is marketed for use in circumventing
14 protection afforded such a technological meas-
15 ure.

16 (c) APPLICATION.—Not later than 30 days after pub-
17 lishing the information required under subsection (b) with
18 respect to seized merchandise, any person that determines
19 that the seized merchandise is merchandise that infringes
20 a right of the person as described in subsection (b) (or
21 an agent of such a person) may submit to the U.S. Cus-
22 toms and Border Protection Agency an application that—

23 (1) identifies the person as a person who holds
24 such a right (or an agent of such a person); and

1 (2) requests the information described in sub-
2 section (d).

3 (d) DISCLOSURE.—Not later than 30 days after re-
4 ceiving an application described in subsection (c), the U.S.
5 Customs and Border Protection Agency shall disclose to
6 the person who submitted the application the following in-
7 formation:

8 (1) The date of importation of the merchandise
9 seized.

10 (2) The United States port of entry at which
11 the merchandise was seized.

12 (3) A description of the merchandise.

13 (4) The quantity of merchandise seized.

14 (5) The country of origin of the merchandise.

15 (6) The name and address of the foreign manu-
16 facturer of the merchandise.

17 (7) The name and address of the exporter of
18 the merchandise.

19 (8) The name and address of the importer of
20 the merchandise.

21 **SEC. 240. INFORMATION FOR TRAVELERS REGARDING VIO-**
22 **LATIONS OF INTELLECTUAL PROPERTY**
23 **RIGHTS.**

24 The Secretary of Homeland Security shall develop
25 and carry out an educational campaign to inform travelers

1 entering or leaving the United States about the legal, eco-
2 nomic, and public health and safety implications of acquir-
3 ing goods that infringe intellectual property rights outside
4 the United States and importing such goods into the
5 United States in violation of United States law.

6 **SEC. 241. INTERNATIONAL COOPERATION AND INFORMA-**
7 **TION SHARING.**

8 (a) COOPERATION.—To the extent practicable and
9 appropriate, the Secretary of Homeland Security shall co-
10 ordinate with the competent law enforcement authorities
11 of foreign governments, including by sharing information
12 relevant to enforcement actions, to enhance the efforts of
13 United States and foreign law enforcement agencies to en-
14 force intellectual property rights.

15 (b) TECHNICAL ASSISTANCE.—To the extent prac-
16 ticable and appropriate, the Secretary of Homeland Secu-
17 rity shall provide technical assistance to competent law en-
18 forcement authorities of foreign governments to enhance
19 the ability of such authorities to enforce intellectual prop-
20 erty rights.

21 **SEC. 242. SENSE OF CONGRESS REGARDING RECORDATION**
22 **PROCESS.**

23 It is the sense of Congress that the Commissioner
24 of U.S. Customs and Border Protection should work with
25 the Under Secretary for Intellectual Property and Direc-

1 tor of the United States Patent and Trademark Office of
 2 the Department of Commerce and the Register of Copy-
 3 rights of the Library of Congress to consider a system
 4 under which—

5 (1) a trademark may be recorded with the U.S.
 6 Customs and Border Protection Agency simulta-
 7 neously with the issuance of trademark registration
 8 by the United States Patent and Trademark Office;
 9 and

10 (2) a copyright may be recorded with the U.S.
 11 Customs and Border Protection Agency simulta-
 12 neously with the registration of a copyright by the
 13 Register of Copyrights.

14 **TITLE III—MISCELLANEOUS** 15 **PROVISIONS**

16 **SEC. 301. CONSULTATION ON TRADE AND CUSTOMS REV-** 17 **ENUE FUNCTIONS.**

18 Section 401(c) of the Safety and Accountability for
 19 Every Port Act (6 U.S.C. 115(c)) is amended—

20 (1) in paragraph (1), by striking “on Depart-
 21 ment policies and actions that have” and inserting
 22 “not later than 30 days after proposing, and not
 23 later than 30 days before finalizing, any Department
 24 policies, initiatives, or actions that will have”; and

1 (2) in paragraph (2)(A), by striking “not later
2 than 30 days prior to the finalization of” and insert-
3 ing “not later than 60 days before proposing, and
4 not later than 60 days before finalizing.”.

5 **SEC. 302. DRAWBACK FOR EXPORTED MERCHANDISE.**

6 (a) IN GENERAL.—Section 313 of the Tariff Act of
7 1930 (19 U.S.C. 1313) is amended to read as follows:

8 **“SEC. 313. DRAWBACK FOR EXPORTED MERCHANDISE.**

9 “(a) DEFINITIONS.—In this section:

10 “(1) BILL OF MATERIALS; FORMULA.—The
11 terms ‘bill of materials’ and ‘formula’ mean records
12 kept in the ordinary course of business that identify
13 each component incorporated into merchandise or
14 that identify the quantity of each element, material,
15 chemical, mixture, or other substance incorporated
16 into merchandise.

17 “(2) COMMISSIONER.—The term ‘Commis-
18 sioner’ means the Commissioner of U.S. Customs
19 and Border Protection.

20 “(3) DESTRUCTION.—The term ‘destruction’
21 means a process by which merchandise loses all com-
22 mercial value, other than the value of any material
23 that may be recovered when the merchandise is de-
24 stroyed.

1 “(4) DIRECT IDENTIFICATION.—The term ‘di-
 2 rect identification’ means identifying, for drawback
 3 purposes, merchandise when exported as the same
 4 merchandise previously imported or as merchandise
 5 into which the imported merchandise is incorporated
 6 using—

7 “(A) the serial number or other unique
 8 identifier of the merchandise; or

9 “(B) such accounting methods as are pro-
 10 vided for by regulation by the Commissioner.

11 “(5) DIRECTLY.—The term ‘directly’ means a
 12 transfer of merchandise from 1 person to another
 13 person without any intermediate transfer.

14 “(6) FUNGIBLE.—The term ‘fungible’ means,
 15 with respect to merchandise, merchandise that is
 16 commercially identical to other merchandise in all in-
 17 stances.

18 “(7) GOOD SUBJECT TO CHILE FTA DRAW-
 19 BACK.—The term ‘good subject to Chile FTA draw-
 20 back’ has the meaning given that term in section
 21 203(a) of the United States-Chile Free Trade Agree-
 22 ment Implementation Act (19 U.S.C. 3805 note).

23 “(8) GOOD SUBJECT TO NAFTA DRAWBACK.—
 24 The term ‘good subject to NAFTA drawback’ has
 25 the meaning given that term in section 203(a) of the

1 North American Free Trade Agreement Implemen-
2 tation Act (19 U.S.C. 3333(a)).

3 “(9) HTS.—The term ‘HTS’ means the Har-
4 monized Tariff Schedule of the United States (19
5 U.S.C. 1202).

6 “(10) INCORPORATED.—The term ‘incor-
7 porated’ means any operation by which merchandise
8 becomes classifiable in a different 8-digit HTS sub-
9 heading number.

10 “(11) INDIRECTLY.—The term ‘indirectly’
11 means a transfer of merchandise from 1 person to
12 another person with 1 or more intermediate trans-
13 fers.

14 “(12) NAFTA COUNTRY.—The term ‘NAFTA
15 country’ has the meaning given that term in section
16 2 of the North American Free Trade Agreement Im-
17 plementation Act (19 U.S.C. 3301).

18 “(13) SCHEDULE B.—The term ‘Schedule B’
19 means the Department of Commerce Schedule B,
20 Statistical Classification of Domestic and Foreign
21 Commodities Exported from the United States.

22 “(14) SUBSTITUTE MERCHANDISE.—The term
23 ‘substitute merchandise’ means merchandise that is
24 substituted for other merchandise for drawback pur-
25 poses pursuant to subsection (b)(3).

1 “(15) VESSEL.—The term ‘vessel’ includes ves-
2 sels, parts of vessels, aircraft, and parts of aircraft.

3 “(b) IN GENERAL.—

4 “(1) DRAWBACK.—If merchandise is imported
5 into the United States and merchandise described in
6 paragraph (2) is then exported, duties, fees, and
7 taxes paid upon entry or importation of the mer-
8 chandise shall be refunded as drawback in an
9 amount determined under subsection (d).

10 “(2) ELIGIBLE MERCHANDISE.—

11 “(A) IN GENERAL.—Merchandise described
12 in this paragraph is—

13 “(i) the imported merchandise;

14 “(ii) merchandise that is substituted
15 for the imported merchandise pursuant to
16 paragraph (3);

17 “(iii) merchandise into which the im-
18 ported merchandise or substitute merchan-
19 dise is incorporated; or

20 “(iv) merchandise that is substituted,
21 pursuant to paragraph (3), for merchan-
22 dise into which the imported merchandise
23 or substitute merchandise is incorporated.

24 “(B) IDENTIFICATION OF MERCHAN-
25 DISE.—A person claiming drawback under this

1 section shall demonstrate that the merchandise
2 being exported is merchandise described in this
3 paragraph based on information contained in
4 the line item for the imported merchandise on
5 the entry summary form and information con-
6 tained in the line item for the exported mer-
7 chandise in the automated export system.

8 “(3) SUBSTITUTION.—

9 “(A) IN GENERAL.—Except as provided in
10 this paragraph, merchandise may be substituted
11 for other merchandise if it can be demonstrated
12 that the merchandise was classifiable under the
13 same 8-digit HTS subheading number as the
14 other merchandise at some point during the 5-
15 year period beginning on the date on which the
16 merchandise was imported.

17 “(B) LIMITATION ON SUBSTITUTION
18 BASED ON EXCISE TAX RATE.—Notwith-
19 standing subparagraph (A), merchandise sub-
20 ject to one excise tax rate may not be sub-
21 stituted for merchandise subject to another ex-
22 cise tax rate.

23 “(C) SPECIAL RULES.—

24 “(i) In the case of merchandise that is
25 classifiable under heading 2710 or 3901

1 through 3914 of the HTS, the merchan-
2 dise may be substituted for other merchan-
3 dise if the merchandise is classifiable under
4 the same 8-digit HTS subheading number
5 as the other merchandise under the HTS
6 as in effect on January 1, 2000.

7 “(ii) Merchandise that is classifiable
8 under subheading 2204.21.50, 2204.29.20,
9 or 2204.29.60 of the HTS may be sub-
10 stituted for other merchandise that is clas-
11 sifiable under any such subheading.

12 “(iii) Merchandise that is classifiable
13 under subheading 2204.21.80, 2204.29.40,
14 or 2204.29.80 of the HTS may be sub-
15 stituted for other merchandise that is clas-
16 sifiable under any such subheading.

17 “(D) CLASSIFICATION.—The Schedule B
18 number for merchandise may be used for pur-
19 poses of determining under subparagraph (A)
20 or (C) if the merchandise is or has been classifi-
21 able under the same 8-digit HTS subheading
22 number as other merchandise.

23 “(4) ELIGIBILITY FOR DRAWBACK FOR MER-
24 CHANDISE INCORPORATED INTO OTHER MERCHAN-
25 DISE.—Imported merchandise described in para-

graph (1) that is incorporated into other merchandise shall be eligible for drawback under this section regardless of the number of times the merchandise is incorporated into other merchandise or such other merchandise is incorporated into other merchandise if the merchandise is otherwise eligible for drawback under this section.

“(5) SPECIAL RULES FOR ETHYL ALCOHOL.—

“(A) IN GENERAL.—Notwithstanding any other provision of law, in the case of any duty paid under subheading 9901.00.50 of the HTS on imports of ethyl alcohol or a mixture of ethyl alcohol, such duty may not be refunded if the exported merchandise upon which a drawback claim is based does not contain ethyl alcohol or a mixture of ethyl alcohol.

“(B) APPLICABILITY.—This paragraph shall apply with respect to—

“(i) imports of ethyl alcohol or a mixture of ethyl alcohol entered for consumption, or withdrawn from warehouse for consumption, on or after October 1, 2008; and

“(ii) imports of ethyl alcohol or a mixture of ethyl alcohol entered for consump-

1 tion, or withdrawn from warehouse for
2 consumption, on or after October 1, 2008,
3 if a duty drawback claim is filed with re-
4 spect to such imports on or after October
5 1, 2010.

6 “(c) ELIGIBILITY TO CLAIM DRAWBACK.—

7 “(1) PERSON MAKING CLAIM.—A person may
8 claim drawback under this section if the person—

9 “(A)(i) imports the merchandise on which
10 the claim is based; or

11 “(ii) obtains the importer’s permission to
12 claim the drawback; and

13 “(B)(i) exports the merchandise on which
14 the claim is based; or

15 “(ii) obtains the exporter’s permission to
16 claim drawback.

17 “(2) CLAIM FOR DRAWBACK ON MERCHANDISE
18 INCORPORATED.—If drawback is claimed with re-
19 spect to imported merchandise or substitute mer-
20 chandise incorporated into other merchandise, the
21 person making the claim shall submit a bill of mate-
22 rials or formula identifying the imported merchan-
23 dise or substitute merchandise and the merchandise
24 into which it is incorporated by the 8-digit HTS sub-
25 heading number and the quantity of the imported

1 merchandise or substitute merchandise (as the case
2 may be) and the merchandise into which it is incor-
3 porated. Imported merchandise or substitute mer-
4 chandise shall be deemed incorporated into other
5 merchandise if the bill of materials or formula for
6 such other merchandise includes the imported mer-
7 chandise or substitute merchandise.

8 “(3) ELECTRONIC FILING.—A claim for draw-
9 back under this section shall be filed electronically.

10 “(4) TIME LIMIT FOR CLAIM.—Drawback may
11 be paid under this section only if the claim for draw-
12 back is filed not later than 5 years after the date on
13 which the merchandise is imported. If merchandise
14 with respect to which drawback is claimed is im-
15 ported on more than 1 date, the earliest date of im-
16 portation shall be used for purposes of this para-
17 graph.

18 “(d) AMOUNT OF DRAWBACK.—

19 “(1) IN GENERAL.—The amount of drawback
20 paid pursuant to this section shall be equal to 99
21 percent of the product of—

22 “(A) the number of units of merchandise
23 exported to claim drawback with respect to im-
24 ported merchandise, and

25 “(B) the lesser of—

1 “(i) the average of duties, taxes, and
 2 fees paid for each unit of the imported
 3 merchandise with respect to which draw-
 4 back is claimed, or

5 “(ii) the average amount of duties,
 6 taxes, and fees that would apply to the ex-
 7 ported merchandise if the exported mer-
 8 chandise were imported.

9 “(2) LIMITATION.—The amount of duties,
 10 taxes, and fees that may be refunded as drawback
 11 with respect to imported merchandise pursuant to
 12 this subsection shall be reduced by the amount of
 13 any duties, taxes, and fees previously refunded to a
 14 person with respect to such merchandise.

15 “(e) REFUNDS, WAIVERS, OR REDUCTIONS UNDER
 16 CERTAIN FREE TRADE AGREEMENTS.—

17 “(1) IN GENERAL.—Subject to section
 18 508(b)(2)(B) of the Tariff Act of 1930 (19 U.S.C.
 19 1508(b)(2)(B)), if merchandise that is exported to a
 20 NAFTA country is a good subject to NAFTA draw-
 21 back, no customs duties on the good may be re-
 22 funded, waived, or reduced in an amount that ex-
 23 ceeds the lesser of—

1 “(A) the total amount of customs duties
2 paid or owed on the good on importation into
3 the United States; or

4 “(B) the total amount of customs duties
5 paid on the good on importation into the
6 NAFTA country.

7 “(2) SPECIAL RULE FOR CANADA.—If Canada
8 ceases to be a NAFTA country and the suspension
9 of the operation of the United States-Canada Free-
10 Trade Agreement thereafter terminates, then for
11 purposes of subsection (b), the shipment to Canada
12 during the period such Agreement is in operation of
13 merchandise made from or substituted for a good el-
14 igible for drawback under section 204(a) of the
15 United States-Canada Free-Trade Agreement Imple-
16 mentation Act of 1988 (Public Law 100–449; 19
17 U.S.C. 2112 note) does not constitute an expor-
18 tation.

19 “(3) SPECIAL RULE FOR CHILE.—

20 “(A) IN GENERAL.—For purposes of sub-
21 sections (b) and (g)(2), if merchandise that is
22 exported to Chile is a good subject to Chile
23 FTA drawback, no customs duties on the good
24 may be refunded, waived, or reduced, except as
25 provided in subparagraph (B).

1 “(B) AMOUNT OF CUSTOMS DUTIES.—The
 2 customs duties referred to in subparagraph (A)
 3 may be refunded, waived, or reduced by—

4 “(i) 100 percent during the 8-year pe-
 5 riod beginning on January 1, 2004;

6 “(ii) 75 percent during the 1-year pe-
 7 riod beginning on January 1, 2012;

8 “(iii) 50 percent during the 1-year pe-
 9 riod beginning on January 1, 2013; and

10 “(iv) 25 percent during the 1-year pe-
 11 riod beginning on January 1, 2014.

12 “(4) FUNGIBLE MERCHANDISE EXPORTED TO
 13 NAFTA COUNTRIES OR CHILE.—

14 “(A) FUNGIBLE MERCHANDISE EXPORTED
 15 TO NAFTA COUNTRIES.—The exportation to a
 16 NAFTA country of merchandise that is fungible
 17 with and substituted for imported merchandise,
 18 other than merchandise described in paragraphs
 19 (1) through (8) of section 203(a) of the North
 20 American Free Trade Agreement Implementa-
 21 tion Act (19 U.S.C. 3333(a)), shall not be
 22 treated as an exportation of substitute mer-
 23 chandise for purposes of drawback under sub-
 24 section (b)(3).

1 “(B) FUNGIBLE MERCHANDISE EXPORTED
2 TO CHILE.—Beginning on January 1, 2015, the
3 exportation to Chile of merchandise that is fun-
4 gible with and substituted for imported mer-
5 chandise, other than merchandise described in
6 paragraphs (1) through (5) of section 203(a) of
7 the United States-Chile Free Trade Agreement
8 Implementation Act (19 U.S.C. 3805 note),
9 shall not be treated as an exportation of sub-
10 stitute merchandise for purposes of drawback
11 under subsection (b)(3). The preceding sentence
12 shall not be construed to permit the substi-
13 tution of merchandise under subsection (b) with
14 respect to merchandise described in paragraph
15 (2) of section 203(a) of the United States-Chile
16 Free Trade Agreement Implementation Act.

17 “(f) PROOF OF EXPORTATION.—A person claiming
18 drawback under this section shall submit, as proof of ex-
19 portation, 1 of the following:

20 “(1) The record of exportation entered in the
21 United States Government automated export system
22 or, if the exporter is unable to use that system, evi-
23 dence of information similar to the information con-
24 tained in such a record.

1 “(2) In the case of a drawback claim filed pur-
 2 suant to paragraph (1) or (2) of subsection (e), the
 3 entry records from Canada or Mexico.

4 “(3) In the case of a deemed export, any record
 5 that establishes the deemed export.

6 “(g) SPECIAL ELIGIBILITY RULES.—

7 “(1) DESTRUCTION OF MERCHANDISE.—

8 “(A) ELIGIBILITY FOR DRAWBACK.—

9 Drawback under this section may be claimed
 10 with respect to imported merchandise if—

11 “(i) the imported merchandise or mer-
 12 chandise into which the imported merchan-
 13 dise is incorporated—

14 “(I) is not exported because of
 15 its destruction; and

16 “(II) was not used in the United
 17 States before its destruction; and

18 “(ii) the person claiming the draw-
 19 back uses direct identification to identify
 20 the imported merchandise that is destroyed
 21 or incorporated into other merchandise
 22 that is destroyed.

23 “(B) AMOUNT OF DRAWBACK.—Subject to
 24 subparagraph (C), the amount of drawback
 25 paid pursuant to subparagraph (A) shall be the

1 amount of drawback determined under sub-
2 section (d)(1).

3 “(C) LIMITATIONS.—

4 “(i) DUTIES, TAXES, AND FEES PRE-
5 VIOUSLY REFUNDED.—The amount of du-
6 ties, taxes, and fees to be refunded with re-
7 spect to imported merchandise pursuant to
8 this paragraph shall be reduced by the
9 amount of any duties, taxes, and fees pre-
10 viously refunded to an importer of record
11 or the person claiming drawback with re-
12 spect to such merchandise.

13 “(ii) VALUE OF MATERIALS RECOV-
14 ERD DURING DESTRUCTION.—The value
15 of the imported merchandise with respect
16 to which drawback is claimed shall be re-
17 duced by the value of any materials recov-
18 ered during the destruction of the mer-
19 chandise (including the value of any tax
20 benefit or royalty payment with respect to
21 such materials).

22 “(2) VESSELS BUILT FOR RESIDENTS OF A
23 FOREIGN COUNTRY.—Drawback under this section
24 may be claimed for materials imported and used in
25 the construction and equipment of vessels built for

foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be exported.

“(3) AGRICULTURAL PRODUCTS.—No drawback may be claimed under this section for an agricultural product with respect to which an over-quota rate of duty has been paid, unless—

“(A) the product is identified as the imported agricultural product using direct identification; and

“(B) the product has not been used in the United States.

“(4) MERCHANDISE NOT REGULARLY ENTERED.—Imported merchandise that is not regularly entered, or withdrawn from warehouse for consumption, does not satisfy the exportation or destruction requirements of this section.

“(5) CERTAIN EXPORTED MERCHANDISE.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), upon the exportation of flavoring extracts, flavors, medicines, medicinal preparations, or perfumes manufactured or produced in the United States in part from domestic alcohol on which an internal revenue tax has

1 been paid, there shall be allowed a drawback in
2 an amount equal to the tax found to have been
3 paid on the alcohol so used.

4 “(B) LIMITATION.—If drawback has been
5 claimed under section 5114 of the Internal Rev-
6 enue Code of 1986 with respect to flavoring ex-
7 tracts, flavors, medicines, medicinal prepara-
8 tions, or perfumes manufactured or produced in
9 the United States, the amount of drawback
10 under this paragraph shall be limited to \$1 per
11 proof gallon.

12 “(C) FORM OF CLAIM.—A claim for draw-
13 back under this paragraph shall be submitted in
14 such form, at such times, and under such con-
15 ditions as the Secretary of the Treasury shall
16 prescribe by regulation.

17 “(h) PROHIBITION ON OTHER CLAIMS FOR DRAW-
18 BACK.—Merchandise that is exported or destroyed to sat-
19 isfy a claim for drawback shall not be the basis of any
20 other claim for drawback, except that appropriate credit
21 and deductions for claims covering components or ingredi-
22 ents of such merchandise shall be made in computing
23 drawback payments.

24 “(i) LIABILITY FOR CLAIM.—

1 “(1) IN GENERAL.—Any person making a claim
2 for drawback with respect to imported merchandise
3 shall be liable for the full amount of the drawback
4 on the imported merchandise.

5 “(2) LIABILITY OF IMPORTERS.—An importer
6 shall be liable for any drawback claim made by an-
7 other person with respect to imported merchandise
8 in an amount equal to the amount of duties, taxes,
9 and fees that the importer authorizes the other per-
10 son to claim with respect to the imported merchan-
11 dise.

12 “(3) JOINT AND SEVERAL LIABILITY.—Any
13 person described in paragraphs (1) and (2) shall be
14 jointly and severally liable for the amount described
15 in paragraph (2).

16 “(4) ORDER OF RECOVERY.—The Secretary of
17 the Treasury shall seek to recover the amount of the
18 drawback from a person described in paragraph (1)
19 before seeking recovery from an importer described
20 in paragraph (2).

21 “(j) PAYMENT FROM RECEIPTS OF PUERTO RICO.—
22 A drawback under this section for merchandise shall be
23 paid from the customs receipts of Puerto Rico if the duties
24 for such merchandise were originally paid into the Treas-
25 ury of Puerto Rico.”.

1 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

2 (1) REFUNDS.—Section 505(b) of the Tariff
3 Act of 1930 (19 U.S.C. 1505(b)), is amended by
4 adding at the end the following: “Refunds of excess
5 moneys deposited, as determined on a liquidation or
6 reliquidation, shall be reduced by any amount paid,
7 on an accelerated basis or otherwise, to a person
8 claiming drawback pursuant to section 313.”.

9 (2) REVIEW OF PROTESTS.—The second sen-
10 tence of section 515(a) of the Tariff Act of 1930 (19
11 U.S.C. 1515(a)) is amended by striking the period
12 at the end and inserting “in accordance with section
13 505.”.

14 (3) REFUNDS, WAIVERS, AND REDUCTIONS OF
15 DUTY UNDER NAFTA.—Section 508(b)(2)(B) of the
16 Tariff Act of 1930 (19 U.S.C. 1508(b)(2)(B)) is
17 amended by striking “section 313(n)(2) or (o)(1)”
18 and inserting “section 313(e)(1)”.

19 (c) EFFECTIVE DATE.—

20 (1) IN GENERAL.—The amendments made by
21 this section shall—

22 (A) take effect on the date on which the
23 Commissioner of U.S. Customs and Border
24 Protection publishes in the Federal Register a
25 finding that the Automated Commercial Envi-

ronment computer system is the exclusive system of record in the United States for filing entry summaries; and

(B) except as provided in paragraph (2), apply to drawback claims filed with respect to merchandise that enters the United States on or after such date.

(2) TRANSITION RULE.—During the 1-year period beginning on the date described in paragraph (1)(A), a person may elect to file a claim for drawback under—

(A) section 313 of the Tariff Act of 1930, as amended by this section; or

(B) section 313 of the Tariff Act of 1930, as in effect on the day before the date described in paragraph (1)(A).

(d) GOVERNMENT ACCOUNTABILITY OFFICE REPORT.—Not later than October 1, 2012, the Comptroller General of the United States shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report that contains—

(1) an evaluation of the costs and benefits to the Federal Government, and the benefits to the private sector, resulting from the implementation of

1 section 313 of the Tariff Act of 1930, as amended
 2 by this section; and

3 (2) an assessment of the extent to which the
 4 implementation of such section 313 may permit a
 5 person claiming drawback with respect to imported
 6 merchandise to receive drawback in excess of the du-
 7 ties, taxes, or fees paid on the imported merchan-
 8 dise.

9 **SEC. 303. PENALTIES FOR CUSTOMS BROKERS.**

10 (a) IN GENERAL.—Section 641(d)(1) of the Tariff
 11 Act of 1930 (19 U.S.C. 1641(d)(1)) is amended—

12 (1) in subparagraph (E), by striking “; or” and
 13 inserting a semicolon;

14 (2) in subparagraph (F), by striking the period
 15 and inserting “; or”; and

16 (3) by adding at the end the following:

17 “(G) has been convicted of committing or
 18 conspiring to commit an act of terrorism de-
 19 scribed in section 2332b of title 18, United
 20 States Code.”.

21 (b) TECHNICAL AMENDMENTS.—Section 641 of the
 22 Tariff Act of 1930 (19 U.S.C. 1641) is amended—

23 (1) in subsection (g)(2)(B), by striking “Sec-
 24 retary’s notice” and inserting “notice under sub-
 25 paragraph (A)”; and

1 (2) by striking “Customs Service” each place it
 2 appears and inserting “U.S. Customs and Border
 3 Protection Agency”.

4 **SEC. 304. ARTICLES REPAIRED OR ALTERED.**

5 (a) ARTICLES EXPORTED AND RETURNED, NOT AD-
 6 VANCED OR IMPROVED IN CONDITION.—Subchapter I of
 7 chapter 98 of the Harmonized Tariff Schedule of the
 8 United States is amended—

9 (1) in the article description for the item relat-
 10 ing to subheading 9801.00.20, by inserting “bail-
 11 ment agreements, or for warehousing, repackaging,
 12 or both,” after “similar use agreements,”; and

13 (2) by adding at the end of the U.S. Notes the
 14 following:

15 “3.(a) For purposes of subheading 9801.00.20, fun-
 16 gible goods exported from the United States—

17 “(i) may be commingled; and

18 “(ii) the origin, value, and classification of such
 19 goods may be accounted for using an inventory man-
 20 agement method.

21 “(b) If a person chooses to use an inventory manage-
 22 ment method under subdivision (a) with respect to fun-
 23 gible goods, the person shall use the same inventory man-
 24 agement method for those goods with respect to which the
 25 person claims fungibility.

1 “(c) For purposes of this note—

2 “(i) the term ‘fungible good’ means any good
3 that is commercially identical to another good in all
4 instances; and

5 “(ii) the term ‘inventory management method’
6 means any method for managing inventory that is
7 based on generally accepted accounting principles.

8 “4. For purposes of subheading 9801.00.26—

9 “(a) an article is sold for exportation and ex-
10 ported to an individual outside of the United States
11 for personal use if the article—

12 “(i) is sold to the individual through the
13 Internet or a catalogue or in any other similar
14 manner; and

15 “(ii) delivered to the individual from a
16 warehouse, distribution center, or similar facil-
17 ity in the United States; and

18 “(b) an article exported to an individual under
19 subdivision (a) is reimported as a personal return if
20 the article is—

21 “(i) returned by the individual to the ware-
22 house, distribution center, or similar facility in
23 the United States from which the article was
24 delivered; and

1 “(ii) resold, without regard to whom the
2 article is resold.”.

3 (b) ARTICLES EXPORTED AND RETURNED, AD-
4 VANCED OR IMPROVED ABROAD.—Subchapter II of chap-
5 ter 98 of the Harmonized Tariff Schedule of the United
6 States is amended by adding at the end of U.S. Note 3
7 the following:

8 “(f)(i) For purposes of subheadings 9802.00.40
9 and 9802.00.50, fungible goods exported from the
10 United States for the purposes described in such
11 subheadings—

12 “(A) may be commingled; and

13 “(B) the origin, value, and classification of
14 such goods may be accounted for using an in-
15 ventory management method.

16 “(ii) If a person chooses to use an inventory
17 management method under this subdivision with re-
18 spect to fungible goods, the person shall use the
19 same inventory management method for those goods
20 with respect to which the person claims fungibility.

21 “(iii) For purposes of this subdivision—

22 “(A) the term ‘fungible good’ means any
23 good that is commercially identical to another
24 good in all instances; and

1 “(B) the term ‘inventory management
2 method’ means any method for managing inven-
3 tory that is based on generally accepted ac-
4 counting principles.”.

5 **SEC. 305. CHARTER FLIGHTS.**

6 Section 13031(e)(1) of the Consolidated Omnibus
7 Budget Reconciliation Act of 1985 (19 U.S.C. 58c(e)(1))
8 is amended—

9 (1) by striking “(1) Notwithstanding section
10 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or
11 any other provision of law (other than paragraph
12 (2))” and inserting the following:

13 “(1)(A) Notwithstanding section 451 of the Tariff
14 Act of 1930 (19 U.S.C. 1451) or any other provision of
15 law (other than subparagraph (B) and paragraph (2))”;
16 and

17 (2) by adding at the end the following:

18 “(B)(i) An appropriate officer of the U.S. Customs
19 and Border Protection Agency may assign a sufficient
20 number of employees from the Agency (if available) to per-
21 form services described in clause (ii) for a charter air car-
22 rier (as defined in section 40102(a)(13) of title 49, United
23 States Code) for a charter flight arriving after normal op-
24 erating hours at an airport that is an established port of
25 entry serviced by the Agency, notwithstanding that over-

1 time funds for those services are not available, if the char-
2 ter air carrier—

3 “(I) not later than 4 hours before the flight ar-
4 rives, specifically requests that such services be pro-
5 vided; and

6 “(II) pays any overtime fees incurred in connec-
7 tion with such services.

8 “(ii) Services described in this clause are customs
9 services for passengers and their baggage or any other
10 such service that could lawfully be performed during reg-
11 ular hours of operation.”.

12 **SEC. 306. SYMPOSIUM FEES.**

13 (a) IN GENERAL.—The Secretary of Homeland Secu-
14 rity may collect fees from any non-Federal participant in
15 a conference, seminar, exhibition, symposium, or similar
16 meeting conducted by the Department of Homeland Secu-
17 rity in advance of such a meeting to offset the costs to
18 the Department of conducting the meeting.

19 (b) EXCESS FEES.—Any fees collected by the Sec-
20 retary pursuant to subsection (a) that exceed the actual
21 costs to the Department of conducting a meeting referred
22 to in that subsection shall be deposited into the Treasury
23 as miscellaneous receipts.

1 **SEC. 307. PILOT PROGRAM FOR ESTABLISHING 24-HOUR**
2 **COMMERCIAL LAND BORDER PORTS OF**
3 **ENTRY.**

4 (a) IN GENERAL.—The President shall establish a
5 pilot program under which the President shall—

6 (1) pursuant to chapter 223 of the Act of Au-
7 gust 1, 1914 (19 U.S.C. 2), designate certain land
8 border crossings as commercial ports of entry in ac-
9 cordance with subsection (b); and

10 (2) ensure that each commercial port of entry
11 designated under paragraph (1) has sufficient re-
12 sources—

13 (A) to carry out the functions of a com-
14 mercial port of entry, including accepting en-
15 tries of merchandise, collecting duties, and en-
16 forcing the customs and trade laws of the
17 United States; and

18 (B) to perform the functions described in
19 subparagraph (A) 24 hours a day.

20 (b) DESIGNATION.—

21 (1) IN GENERAL.—Not later than 180 days
22 after the date of the enactment of this Act, the
23 President shall designate as 24-hour commercial
24 ports of entry under the pilot program—

25 (A) not less than 1 and not more than 3
26 land border crossings on the northern border of

1 the United States that meet the criteria de-
2 scribed in paragraph (2); and

3 (B) not less than 1 and not more than 3
4 land border crossings on the southern border of
5 the United States that meet the criteria de-
6 scribed in paragraph (2).

7 (2) CRITERIA FOR DESIGNATION.—The criteria
8 described in this paragraph are, with respect to a
9 land border crossing, the following:

10 (A) The land border crossing is located in
11 a State that has 2 or fewer 24-hour commercial
12 ports of entry.

13 (B) The land border crossing is located on
14 land owned by the United States Government.

15 (C) An environmental assessment has been
16 made of the land on which the border crossing
17 is located.

18 (D) The costs associated with the designa-
19 tion of the land border crossing as a commer-
20 cial port of entry do not exceed \$30,000,000.

21 (E) Based on an economic study, a deter-
22 mination is made that the designation will have
23 a positive economic impact on the local commu-
24 nity where the land border crossing is located.

1 (F) The appropriate authorities of the
2 Government of Canada or Mexico, as the case
3 may be, have expressed an intention to commit
4 resources to a similar designation of a cor-
5 responding foreign port.

6 (G) A State or local government has dem-
7 onstrated support for the designation through
8 infrastructure improvements to facilitate the
9 operation of the land border crossing as a 24-
10 hour commercial port of entry.

11 (c) REPORT.—Not later than 90 days before the
12 President makes a determination under subsection (d)(1),
13 the President shall submit to the Committee on Finance
14 of the Senate and Committee on Ways and Means of the
15 House of Representatives a report that provides—

16 (1) a comparison of the vehicle traffic crossing
17 at each land border crossing—

18 (A) before the designation of the crossing
19 as a 24-hour commercial port of entry under
20 the pilot program; and

21 (B) after the port of entry becomes fully
22 operational as a 24-hour commercial port of
23 entry under the pilot program;

24 (2) an estimate of the total value of commercial
25 goods that crossed each land border crossing des-

1 ignated as a 24-hour commercial port of entry after
2 becoming fully operational as a 24-hour commercial
3 port of entry; and

4 (3) a comparison of—

5 (A) wait times at other ports of entry in
6 each State in which a port of entry is des-
7 ignated as a 24-hour commercial port of entry
8 under the pilot program during the 2-year pe-
9 riod preceding the designation; and

10 (B) wait times at such other ports of entry
11 in the State after the port of entry in the State
12 designated as a 24-hour commercial port of
13 entry becomes fully operational as a 24-hour
14 commercial port of entry.

15 (d) TERMINATION.—

16 (1) DETERMINATION OF ECONOMIC BENEFIT.—

17 Not later than the date that is 2 years after the date
18 on which a port of entry becomes fully operational
19 as a 24-hour commercial port of entry under the
20 pilot program, the President shall—

21 (A) determine whether the operation of the
22 port of entry 24 hours a day provides a net eco-
23 nomic benefit to the United States; and

24 (B) submit to the Committee on Finance
25 of the Senate and the Committee on Ways and

1 Means of the House of Representatives a report
 2 on that determination and the reasons for that
 3 determination.

4 (2) TERMINATION.—If the President deter-
 5 mines under paragraph (1) that operating a port of
 6 entry 24 hours a day does not provide a net eco-
 7 nomic benefit to the United States, that port of
 8 entry shall cease to operate 24 hours a day on the
 9 date on which the President submits the report
 10 under paragraph (1)(B).

11 **SEC. 308. PROHIBITION ON IMPORTATION OF GOODS MADE**
 12 **WITH FORCED OR INDENTURED LABOR OR**
 13 **BY BENEFIT OF HUMAN TRAFFICKING.**

14 (a) GOODS MADE WITH FORCED LABOR.—

15 (1) IN GENERAL.—Section 307 of the Tariff
 16 Act of 1930 (19 U.S.C. 1307) is amended to read
 17 as follows:

18 **“SEC. 307. PROHIBITION ON IMPORTATION OF GOODS**
 19 **MADE WITH FORCED OR INDENTURED LABOR**
 20 **OR BY BENEFIT OF HUMAN TRAFFICKING.**

21 **“(a) PROHIBITION ON IMPORTATION.—**No good may
 22 be imported into the United States, if that good was pro-
 23 duced, in whole or in part—

24 **“(1) with convict labor, forced labor, or inden-**
 25 **tured labor under penal sanctions;**

1 “(2) by means of coercion (as defined in section
2 103 of the Trafficking Victims Protection Act of
3 2000 (22 U.S.C. 7102)), including by means of an
4 employer withholding the passport or other travel
5 documents of a foreign worker in order to compel
6 the production of that good; or

7 “(3) by 1 or more individuals who, at the time
8 of the production were being subjected to a severe
9 form of trafficking in persons (as defined in section
10 103 of the Trafficking Victims Protection Act of
11 2000 (22 U.S.C. 7102)).

12 “(b) CIVIL PENALTIES.—

13 “(1) IN GENERAL.—Any person who violates
14 any provision of this section or any regulation issued
15 under this section may, in addition to any other civil
16 or criminal penalty that may be imposed under this
17 Act or title 18, United States Code, or any other
18 provision of law, be assessed a civil penalty by the
19 Secretary of Homeland Security of not more than—

20 “(A) for the first violation, an amount
21 equal to 3 times the value of the goods im-
22 ported or attempted to be imported in violation
23 of this section; and

24 “(B) for the second and subsequent viola-
25 tions, an amount equal to 6 times the value of

1 the goods imported or attempted to be imported
2 in violation of this section.

3 “(2) DEBARMENT.—

4 “(A) IN GENERAL.—The Secretary may
5 prohibit a person from importing any good into
6 the United States, or exporting any good from
7 the United States, if the Secretary finds that
8 the person has engaged in a pattern or practice
9 of actions that has resulted in a final deter-
10 mination with respect to the assessment of civil
11 or criminal penalties for knowing and inten-
12 tional or grossly negligent violations of any pro-
13 vision of this section or any regulation issued
14 under this section.

15 “(B) REINSTATEMENT.—The Secretary
16 may retract a prohibition imposed with respect
17 to a person under subparagraph (A) if the Sec-
18 retary determines that changed circumstances
19 warrant such a retraction.

20 “(3) NOTICE.—No penalty may be assessed
21 under this section against a person for violating a
22 provision of this section or a regulation issued under
23 this section unless the person is given notice and op-
24 portunity for a hearing with respect to such violation

1 in accordance with section 554 of title 5, United
2 States Code.

3 “(c) DEFINITIONS.—In this section:

4 “(1) CHILD LABOR.—The terms ‘forced labor’
5 and ‘indentured labor’ include forced or indentured
6 child labor.

7 “(2) CONVICT LABOR.—The term ‘convict labor’
8 means work performed by an individual while im-
9 prisoned by a foreign government and without com-
10 pensation.

11 “(3) FORCED LABOR.—The term ‘forced labor’
12 means all work or service that is exacted from any
13 person under the menace of any penalty for non-
14 performance and in which the person does not en-
15 gage voluntarily.

16 “(4) GOODS.—The term ‘goods’ means goods,
17 wares, articles, and merchandise.

18 “(5) INDENTURED LABOR UNDER PENAL SANC-
19 TIONS.—The term ‘indentured labor under penal
20 sanctions’ means work performed under a contract if
21 the contract can be enforced through the imposition
22 of a penalty or imprisonment.

23 “(6) PRODUCED.—The term ‘produced’ means
24 produced, mined, or manufactured.”.

1 (2) EFFECTIVE DATE.—The amendment made
2 by this subsection applies to goods entered, or with-
3 drawn from warehouse for consumption, on or after
4 the date that is 15 days after the date of the enact-
5 ment of this Act.

6 (b) MONITORING AND REPORTING.—

7 (1) ESTABLISHMENT OF OFFICE FOR LABOR
8 ENFORCEMENT.—

9 (A) IN GENERAL.—There is established
10 within the U.S. Immigration and Customs En-
11 forcement Agency of the Department of Home-
12 land Security an Office for Labor Enforcement
13 (in this subsection referred to as the “Office”)
14 to coordinate enforcement of the prohibition on
15 importing goods described in section 307 of the
16 Tariff Act of 1930, as amended by this section.

17 (B) ASSISTANT DIRECTOR.—The Office
18 shall be headed by the Assistant Director for
19 Labor Enforcement who shall—

20 (i) be appointed by the Secretary of
21 Homeland Security, in consultation with
22 the Secretary of the Treasury; and

23 (ii) report to the Director of U.S. Im-
24 migration and Customs Enforcement.

1 (C) DUTIES.—The Assistant Director
2 shall—

3 (i) oversee the investigations of the
4 U.S. Immigration and Customs Enforce-
5 ment Agency with respect to the prohibi-
6 tion on importing goods described in sec-
7 tion 307 of the Tariff Act of 1930;

8 (ii) coordinate efforts to enforce the
9 prohibition on importing goods described in
10 section 307 of the Tariff Act of 1930, and
11 centralize information collected with re-
12 spect to that prohibition, by—

13 (I) the U.S. Immigration and
14 Customs Enforcement Agency;

15 (II) the U.S. Customs and Bor-
16 der Protection Agency;

17 (III) the Department of the
18 Treasury;

19 (IV) the Department of State;

20 (V) the Department of Labor;

21 (VI) the Department of Com-
22 merce; and

23 (VII) the Foreign Agricultural
24 Service of the Department of Agri-
25 culture;

1 (iii) coordinate with foreign govern-
2 ments to prevent the exportation to the
3 United States of goods prohibited under
4 section 307 of the Tariff Act of 1930;

5 (iv) prepare and publish the list of
6 producers described in paragraph (2); and

7 (v) report annually, as described in
8 paragraph (3), to the Committee on Fi-
9 nance of the Senate and the Committee on
10 Ways and Means of the House of Rep-
11 resentatives.

12 (2) LIST OF PRODUCERS.—

13 (A) IN GENERAL.—The list described in
14 this paragraph is a list compiled and regularly
15 updated by the Assistant Director for Labor
16 Enforcement that includes the name and coun-
17 try of each producer of goods the importation
18 of which is prohibited under section 307 of the
19 Tariff Act of 1930. The list and regular up-
20 dates shall be published in the Federal Reg-
21 ister.

22 (B) REMOVAL FROM LIST.—The Assistant
23 Director may remove a producer from the list
24 under subparagraph (A) if the Assistant Direc-

1 tor determines that changed circumstances war-
2 rant such a removal.

3 (3) REPORT.—The report required by para-
4 graph (1)(C)(vi) is a report submitted 180 days
5 after the date of the enactment of this Act, and an-
6 nually thereafter, that contains the following:

7 (A) The volume and value of goods made
8 with child labor, convict labor, forced labor, in-
9 dentured labor under penal sanctions, or any
10 other coercion (as such terms are defined in
11 section 307 of the Tariff Act of 1930) that are
12 seized upon arrival in the United States.

13 (B) A description of the goods described in
14 subparagraph (A).

15 (C) An assessment of the extent to which
16 child labor, convict labor, forced labor, inden-
17 tured labor under penal sanctions, or any other
18 coercion are used in producing goods destined
19 for the United States.

20 (D) The progress being made in identi-
21 fying and interdicting goods that are destined
22 for the United States that are made with child
23 labor, convict labor, forced labor, indentured
24 labor under penal sanctions, or any other coer-
25 cion.

1 (E) The most recent list of producers com-
2 piled pursuant to subsection (b)(2).

3 (4) OTHER DUTIES.—The Office shall also be
4 responsible for investigations relating to fraud, gross
5 negligence, and negligence under section 592 of the
6 Tariff Act of 1930 (19 U.S.C. 1592) with respect to
7 violations of section 307 of such Act.

8 (c) CONFORMING AMENDMENT.—Section 501 of the
9 U.S.-China Relations Act of 2000 (22 U.S.C. 6961) is re-
10 pealed.

11 **SEC. 309. HONEY TRANSSHIPMENT.**

12 (a) IN GENERAL.—The Commissioner of U.S. Cus-
13 toms and Border Protection shall direct appropriate per-
14 sonnel and resources of the U.S. Customs and Border Pro-
15 tection Agency to address concerns that honey is being
16 imported into the United States in violation of the customs
17 and trade laws of the United States.

18 (b) COUNTRY OF ORIGIN.—

19 (1) IN GENERAL.—The Commissioner of U.S.
20 Customs and Border Protection shall compile a
21 database of the individual characteristics of honey
22 produced in foreign countries to facilitate the
23 verification of country of origin markings of im-
24 ported honey.

1 (2) ENGAGEMENT WITH FOREIGN GOVERN-
2 MENTS.—The Commissioner shall seek to engage the
3 customs agencies of foreign governments for assist-
4 ance in compiling the database described in para-
5 graph (1).

6 (c) SENSE OF CONGRESS.—It is the sense of Con-
7 gress that the Commissioner of the Food and Drug Ad-
8 ministration should promptly establish a national standard
9 of identity for honey for the Commissioner of U.S. Cus-
10 toms and Border Protection to use to ensure that imports
11 of honey are—

12 (1) classified accurately for purposes of assess-
13 ing duties; and

14 (2) denied entry into the United States if such
15 imports pose a threat to the health or safety of con-
16 sumers in the United States.

17 **SEC. 310. CONTRABAND ARCHAEOLOGICAL OR ETHNO-**
18 **LOGICAL MATERIALS.**

19 (a) IN GENERAL.—The Commissioner of U.S. Cus-
20 toms and Border Protection shall ensure that appropriate
21 personnel of the U.S. Customs and Border Protection
22 Agency are trained in the detection, identification, and de-
23 tention of archaeological or ethnological materials the im-
24 portation of which violates the customs and trade laws of
25 the United States.

1 (b) TRAINING.—The Commissioner of U.S. Customs
 2 and Border Protection is authorized to accept training and
 3 other support services from experts outside of the Federal
 4 Government in the detection, identification, and detention
 5 of archaeological or ethnological materials described in
 6 subsection (a).

7 **SEC. 311. DE MINIMIS AND INFORMAL ENTRIES.**

8 (a) DE MINIMIS VALUE.—Section 321(a)(2)(C) of
 9 the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C)) is
 10 amended by striking “\$200” and inserting “\$500”.

11 (b) ENTRY UNDER REGULATIONS.—Section 498 of
 12 the Tariff Act of 1930 (19 U.S.C. 1498) is amended—

13 (1) in subsection (a), by striking paragraph (1)
 14 and inserting the following:

15 “(1) Merchandise, when different commercial
 16 facilitation and risk considerations that may vary for
 17 different classes or kinds of merchandise or different
 18 classes of transactions may dictate;”;

19 (2) by redesignating subsection (b) as sub-
 20 section (c); and

21 (3) by inserting after subsection (a) the fol-
 22 lowing:

23 “(b) ENTRY OF MERCHANDISE VALUED AT \$2,500
 24 OR LESS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), the Secretary of the Treasury shall pre-
3 scribe rules and regulations for the declaration and
4 entry of merchandise if the aggregate value of the
5 shipment of merchandise does not exceed \$2,500.

6 “(2) EXCEPTION.—The rules and regulations
7 prescribed under paragraph (1) shall not apply to
8 articles that—

9 “(A) have a value in excess of \$250; and

10 “(B) are classified under section VII, VIII,
11 XI, or XII, chapter 94, or subchapter III or IV
12 of chapter 99 of the Harmonized Tariff Sched-
13 ule of the United States.”.

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